

JEFFERSON CIRCUIT COURT

DIVISION NINE

BROWN & WILLIAMSON :

TOBACCO CORPORATION, :

Plaintiff, :

vs. : Case No. 95-CI-06560

JEFFREY S. WIGAND :

Defendant. :

The videotaped deposition of  
Jeffrey S. Wigand, the Defendant herein,  
was taken before Special Commissioner  
Richard A. Revell, and reported by Thomas  
F. Runfola, a Registered Professional  
Reporter, pursuant to notice, at the  
offices of Middleton & Reutlinger, 2500  
Brown & Williamson Tower, Louisville,  
Kentucky, on Wednesday, November 13, 1996,  
at 9:00 o'clock a.m.

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<p>1 APPEARANCES.</p> <p>2 Middleton &amp; Reutlinger 3 401 South Fourth Avenue 4 2100 Brown &amp; Williamson Tower 5 Louisville, Kentucky 40202 6 By Mr. James E. Milliman, and 7 Mr. Henry S. Allford.</p> <p>8 and</p> <p>9 King &amp; Spalding 10 15 Peachtree Street 11 Atlanta, Georgia 30303 12 By Mr. William C. Mandelcorn, III.</p> <p>13 and</p> <p>14 Chadbourne &amp; Parks 15 30 Rockefeller Plaza 16 New York, New York 10012 17 By Mr. David L. Wallace, and 18 Mr. Bruce G. Sheffler</p> <p>19 and</p> <p>20 Parker &amp; O'Connell 21 Suite 1940 22 Provident Center 23 400 West Market Street 24 Louisville, Kentucky 40202 By Mr. Michael J. O'Connell.</p> <p>On behalf of the Plaintiff.</p> <p>Shen &amp; GARDNER 1800 Massachusetts Avenue, N.W. Washington, DC 20036 By Mr. John D. Aldock and Ms. Laura S. Wuchelmeier</p> <p>On behalf of the Defendant.</p>	<p>1 INDEX</p> <p>2</p> <p>3 EXAMINATION</p> <p>4 Page</p> <p>5 Further Exam By Mr. Sheffler 2483</p> <p>6</p> <p>7 EXHIBITS</p> <p>8 Marked</p> <p>9 Exhibit No. 83 2483</p> <p>10 Exhibit No. 84 2481</p> <p>11 Exhibit No. 85 2489</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
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<p>1 ALSO PRESENT:</p> <p>2 U.S. Department of Justice 3 Criminal Division, Fraud Section 4 1400 New York Avenue, N.W. 5 Washington, DC 20004 6 By Mr. J. Wayne S. Warren</p> <p>7 and</p> <p>8 Brown &amp; Williamson 9 Tobacco Corporation 10 2500 Weaver Road 11 P.O. Box 1056 12 Macon, Georgia 31208 13 By Scott Appleton, Ph.D.</p>	<p>1 Wednesday Morning Session</p> <p>2 November 13, 1996</p> <p>3 8:45 o'clock a.m.</p> <p>4 THE VIDEOGRAPHER: Back on the</p> <p>5 record, the time is approximately 9:03.</p> <p>6 THE COURT: Go ahead, Laura.</p> <p>7 MS. WEATHERS: In the course</p> <p>8 of our conversations over the last two</p> <p>9 days there have been several document</p> <p>10 issues that we have, have come up and been</p> <p>11 resolved. There were several that came up</p> <p>12 yesterday that we talked about and one was</p> <p>13 Dr. Wigand's 1996 daytimer. And it's been</p> <p>14 produced without redactions in its</p> <p>15 entirety. And for your convenience I have</p> <p>16 tabbed the pages which entries would</p> <p>17 appear.</p> <p>18 You asked about the Zip Express</p> <p>19 labels to which Dr. Wigand had testified.</p> <p>20 I think I indicated to you yesterday there</p> <p>21 was only one such label. There is a copy</p> <p>22 of it WGD3455</p> <p>23 There was an issue that arose</p> <p>24 with respect to Mr. Thompson, whether a</p>

<p>Page 2483</p> <p>1 Letter had been sent to Marie Brenner 2 before or after publication of the 3 article. I had reported that we had 4 reviewed Mr. Thompson's files and found no 5 such letter. Mr. Thompson confirms that 6 there is no such letter.</p> <p>7 THE COURT: Did he say that he 8 never wrote one or he didn't retain a copy 9 or --</p> <p>10 MS. WERTHEIMER: He says -- 11 without going into the substance of the 12 privilege conversations, no letter was 13 written. It's not that a letter was 14 written and sent and he didn't retain a 15 copy. A letter was not written.</p> <p>16 THE COURT: It makes a 17 difference.</p> <p>18 MS. WERTHEIMER: The letter was 19 not written.</p> <p>20 And last, there was some 21 conversation yesterday about Mr. Bulle. 22 And a report or a statement -- a report 23 that was given to Mr. Mobley by Mr. Bulle.</p> <p>24 MR. SHEFFLER: Go ahead.</p>	<p>Page 2483</p> <p>1 MR. SHEFFLER: I think that's 2 right now. We will check on those, but I 3 think we are up-to-date. Thank you very 4 much.</p> <p>5 Your Honor, if we can, first of 6 all, let's mark the -- what's labeled as 7 WG03455.</p> <p>8 -----</p> <p>9 Thereupon, Wigand Exhibit 10 No. 83 was marked for 11 purposes of identification.</p> <p>12 -----</p> <p>13 EXAMINATION</p> <p>14 BY MR. SHEFFLER.</p> <p>15 Q. Mr. Wigand, what we have marked 16 for identification as 83 has been produced 17 this morning with WG03455 at the bottom.</p> <p>18 Is that, in fact, sir, the Fed-Ex slip, or 19 Zip Express slip that was attached to the 20 box of documents you received sometime 21 after your termination?</p> <p>22 A. The third box.</p> <p>23 Q. The third box. Is it?</p> <p>24 A. I believe so, yes. And it says</p>
<p>Page 2484</p> <p>1 MS. WERTHEIMER: Did I misspeak?</p> <p>2 MR. SHEFFLER: No.</p> <p>3 MS. WERTHEIMER: I think you 4 indicated that you believed such request 5 would be caught by your discovery request. 6 I would suggest that that was not caught 7 by your discovery request. But knowing 8 that those discovery requests are always 9 in flux, I just would refer you to request 10 10 which doesn't catch it at all or any 11 other request.</p> <p>12 But passing that, there is no 13 report from Mr. Bulle to Mr. Mobley.</p> <p>14 MR. SHEFFLER: There never was?</p> <p>15 MR. ALDOCK: Written report.</p> <p>16 MS. WERTHEIMER: There was no 17 written report, I'm sorry.</p> <p>18 MR. KILLMAN: And there never 19 was?</p> <p>20 MS. WERTHEIMER: There never was 21 a written report, correct.</p> <p>22 MR. SHEFFLER: Okay.</p> <p>23 MS. WERTHEIMER: I think that 24 brings us to the end of our checklist.</p>	<p>Page 2484</p> <p>1 what was -- I don't interpret it but it 2 says from B &amp; W to Wigand at my address 3 and it's addressed with a Brown &amp; 4 Williamson label from the tower, addressed 5 to me.</p> <p>6 THE COURT: Does it bear date?</p> <p>7 THE WITNESS: No, it doesn't.</p> <p>8 It doesn't bear much.</p> <p>9 Q. Was there any more to this label 10 when you got the box; was there any 11 additional information on the label?</p> <p>12 A. No, that's exactly what was 13 there.</p> <p>14 Q. You still have the original 15 then; you still have the original label?</p> <p>16 A. I don't have it but it's in the 17 custody of my attorney.</p> <p>18 MS. WERTHEIMER: We have the box 19 top with the label affixed.</p> <p>20 Q. Okay. Mr. Wigand, why did you 21 save the label and box top for the third 22 box and not the other two?</p> <p>23 A. Why did I save this one?</p> <p>24 Q. Yes.</p>

<p style="text-align: right;">Page 2485</p> <p>1 A. Because the contents of the 2 other boxes during my cleaning up were 3 thrown away. 4 Q The Contents of the other boxes 5 were thrown away? 6 A. My 1989 and '90 medical records 7 were thrown away, at least the records 8 that I had that related to claims that I 9 had filed in 1989 and '90, '92. 10 Q Okay. 11 A. So I didn't keep the boxes. I 12 threw the boxes away. 13 Q. What I understood you to say 14 yesterday was that you had received in 15 addition to your medical records in those 16 first two boxes other documents? 17 A. Some personal correspondence, 18 yes. 19 Q But there wasn't any Brown &amp; 20 Williamson documents in those first two 21 boxes? 22 A. I turned them over to the CID. 23 and I testified to that yesterday. 24 Q. It wasn't just personal stuff</p>	<p style="text-align: right;">Page 2487</p> <p>1 Q. So in May or June of 1994, you 2 threw the first two boxes away? 3 A. Um-hum. 4 Q. And whatever documents were in 5 those first two boxes that related to 6 Brown &amp; Williamson you did no longer have 7 at that point in time? 8 A. No, I had turned them over as I 9 keep on telling you. You are wasting time 10 on this by doing this. I explained it 11 clearly, I turned over all documents in my 12 possession to Brown &amp; Williamson in 13 December of 1993, and 1994. 14 Q. All right. So you threw those 15 two boxes and the contents away because 16 there were no Brown &amp; Williamson documents 17 in them at that time? 18 A. Yes. 19 Q. So when you say you threw the 20 all the contents of the first two boxes 21 away, you were excluding the Brown &amp; 22 Williamson documents that you had taken 23 out of the box? 24 A. Yes.</p>
<p style="text-align: right;">Page 2486</p> <p>1 that you threw away, there were B &amp; W 2 documents in those boxes? 3 A. I did not say I threw Brown &amp; 4 Williamson documents away. I turned all 5 Brown &amp; Williamson documents that I found 6 in the two boxes to Mr. Etheridge, to Mr. 7 Patton and Mr. Milliman -- 8 Q. I understand. 9 A. -- in December of 1993 and 10 '94 -- and early 1994. 11 Q. I understand that, sir. My 12 question was -- we started off by my 13 asking you why did you keep this and not 14 the others, and you said you threw the 15 other away -- 16 A. I threw the other boxes away. 17 Q. -- because you threw all the 18 contents of the boxes away. That's what 19 you testified. But you didn't throw all 20 the contents of the boxes away? 21 A. This is in May, June of 1994 22 when I was cleaning the basement out. 23 Q. Okay. 24 A. I was cleaning up.</p>	<p style="text-align: right;">Page 2488</p> <p>1 Q. So at the time you threw these 2 boxes away was in May or June of the first 3 two boxes of your personal materials and 4 then you kept the third box? 5 A. The third box, yes. 6 Q. And you have the third box and 7 you have the label? 8 A. Yes. 9 MS. WERTHEIMER: Pardon me, I 10 don't think he says he has the whole box. 11 I think all he has testified to is he has 12 the box top and the label which is now in 13 our possession. 14 Q. Do you have the entire box? 15 A. No, I don't think so, I just 16 think I just have the label, the box top. 17 Q. Why did you save the box top and 18 label? 19 A. I just saved it. 20 Q. Okay. But why? 21 A. I just saved it. 22 Q. You threw away the box itself 23 but you saved the top and the label that 24 you threw away the other two boxes and</p>

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<p>Page 2489</p> <p>1 labels; is that correct?</p> <p>2 A I may have thrown the bottom</p> <p>3 part of the box away at a later date.</p> <p>4 I saved the box top.</p> <p>5 Q And there was a reason for that?</p> <p>6 A Was there a reason for it? No</p> <p>7 particular reason, I just did it. I don't</p> <p>8 have to have a reason.</p> <p>9 Q You didn't save the first two</p> <p>10 box tops?</p> <p>11 A I didn't need them.</p> <p>12 Q Why did you need this one?</p> <p>13 A This was just interesting.</p> <p>14 Q Why?</p> <p>15 A Because of the contents of the</p> <p>16 box.</p> <p>17 Q Okay. So you saved it because</p> <p>18 of the contents of the box were</p> <p>19 interesting?</p> <p>20 A Yeah.</p> <p>21 Q Any other reason why they were</p> <p>22 interesting?</p> <p>23 A No.</p> <p>24 Q Did they look interesting</p>	<p>Page 2490</p> <p>1 because of the color of the paper?</p> <p>2 A No.</p> <p>3 Q Well, what was interesting about</p> <p>4 the materials in them that you saved the</p> <p>5 box top?</p> <p>6 A They were Brown &amp; Williamson</p> <p>7 documents.</p> <p>8 Q So you thought there might be</p> <p>9 some question but how you got those</p> <p>10 documents at later time, didn't you?</p> <p>11 A Could be.</p> <p>12 Q And you thought there might be</p> <p>13 some question about how you got those</p> <p>14 documents because those documents</p> <p>15 contained confidential information;</p> <p>16 information you realized Brown &amp;</p> <p>17 Williamson considered confidential, didn't</p> <p>18 you?</p> <p>19 A I had already been talking to</p> <p>20 the FDA.</p> <p>21 Q Is that responsive?</p> <p>22 THE COURT: Doesn't answer the</p> <p>23 question. Please answer.</p> <p>24 THE WITNESS Ask again.</p>	<p>Page 2491</p> <p>1 MR. SHEFFLER: Could you read</p> <p>2 it back, please?</p> <p>3 (The last question was read by</p> <p>4 the reporter.)</p> <p>5 THE WITNESS: Brown &amp;</p> <p>6 Williamson could have considered it</p> <p>7 confidential are or not. They may have</p> <p>8 considered it confidential. They consider</p> <p>9 a lot of things confidential.</p> <p>10 Q The question to you, sir, is at</p> <p>11 the time that you saved this box top and</p> <p>12 threw away the box, or at the time you</p> <p>13 saved this box top, did you not save it</p> <p>14 because you realized that the information</p> <p>15 in the box was considered confidential by</p> <p>16 Brown &amp; Williamson?</p> <p>17 A No.</p> <p>18 Q So what was the reason you saved</p> <p>19 it?</p> <p>20 A I have no particular reason of</p> <p>21 saving it.</p> <p>22 Q There is no reason, you just</p> <p>23 saved it?</p> <p>24 A I just saved it.</p>	<p>Page 2492</p> <p>1 Q Did you save any other receipts</p> <p>2 for years; any other Federal Express</p> <p>3 receipts for years?</p> <p>4 A Sometimes I do, yes.</p> <p>5 Q Just because they are Federal</p> <p>6 Express receipts?</p> <p>7 A Yes.</p> <p>8 Q No particular reason?</p> <p>9 A I tend to save things, yes.</p> <p>10 Q You tend to save things?</p> <p>11 A Um-hum.</p> <p>12 Q Sir, after you were fired, did</p> <p>13 you receive any other Brown &amp; Williamson</p> <p>14 documents in addition to the three boxes</p> <p>15 you have testified about?</p> <p>16 A Not to my recollection, no.</p> <p>17 Q In the three boxes you</p> <p>18 received -- let's limit our conversation</p> <p>19 to the Brown &amp; Williamson documents. In</p> <p>20 those three boxes, were there original</p> <p>21 Brown &amp; Williamson documents?</p> <p>22 A I believe so.</p> <p>23 Q Were there any copies of Brown &amp;</p> <p>24 Williamson documents?</p>
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<p style="text-align: right;">Page 2493</p> <p>1 A. I assume what was in there was                  2 also copies but I cannot tell what was                  3 original and what was not original.                  4 Q. You can't tell the difference                  5 between a Xerox copy and an original of a                  6 document?                  7 A. No.                  8 Q. Okay. You could tell that there                  9 were some original documents in there,                  10 they had enough indicia of originality                  11 that you could tell that they were                  12 original --                  13 A. Why don't you define for me                  14 what's the indicia of originality.                  15 Q. Do you know what the Leaf                  16 Blenders manual looks like?                  17 A. Yes.                  18 Q. And what kind of cover does it                  19 have? Just tell me, does it have a paper                  20 cover or is it a cardboard cover or what                  21 type cover does it have?                  22 A. Paper.                  23 Q. And you know the color of it,                  24 don't you?</p>	<p style="text-align: right;">Page 2495</p> <p>1 understand your testimony, corroborated                  2 some documents, you gave them some                  3 documents, and gave them a copy of the                  4 Leaf Blenders manual; is that correct?                  5 A. No, that's not entirely                  6 correct. Let me just correct it for you.                  7 The FDA had the Leaf Blenders manual.                  8 They had a number of documents. What I                  9 did is I provided to them, after they                  10 already had those documents, corroboration                  11 with the originals that I had, or the                  12 copies I had.                  13 Q. So there was no document that                  14 you showed the FDA that they didn't                  15 already have; is that correct?                  16 A. That's correct.                  17 Q. At least that's your testimony.                  18 Did you give them a copy of the Leaf                  19 Blenders manual?                  20 A. No, I did not give them a copy.                  21 I gave them my copy and they copied it.                  22 Q. Okay. And they gave you your                  23 copy back?                  24 A. I believe so, yes.</p>
<p style="text-align: right;">Page 2494</p> <p>1 A. I think what was blue/green or                  2 blue.                  3 Q. Do you have a copy of that?                  4 A. No.                  5 Q. Do you have the original of it?                  6 A. No.                  7 Q. Did you ever, since your                  8 termination, have a copy of it?                  9 A. Did I ever have a copy of it?                  10 Not to my belief, no.                  11 Q. You had an original of it?                  12 A. I think I had Mr. Pritchard's                  13 copy, whether what was his original copy                  14 or not I don't know.                  15 Q. Well, the cover of it, was it                  16 blue/green or was it a Xerox copy?                  17 A. I think what was blue/green.                  18 Q. Then do you think, sir, that it                  19 may have been the original or do you think                  20 what was a copy?                  21 A. I don't know if what was the                  22 original or not.                  23 Q. Okay. Now, sir, when you went                  24 to the FDA, you said that you, if I</p>	<p style="text-align: right;">Page 2496</p> <p>1 Q. Did they give you the copy back?                  2 A. They gave me my copy back, I                  3 believe, that I gave them.                  4 Q. Okay. Let's start again. You                  5 had a Leaf Blenders manual that had a                  6 blue/green cover on it?                  7 A. To the best of my recollection,                  8 yes.                  9 Q. Okay. You went to the FDA in                  10 May with that in your possession? May or                  11 June; is that right?                  12 A. Yes.                  13 Q. You saw Dr. Kessler, right?                  14 A. Yes.                  15 Q. You said Dr. Kessler had a copy                  16 of the Leaf Blenders manual in his                  17 possession at that time?                  18 A. Yes.                  19 Q. But not from you, he didn't get                  20 that copy from you?                  21 A. That's correct.                  22 Q. Did he show you his?                  23 A. Yes.                  24 Q. Was it a -- did it have a</p>

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<p style="text-align: right;">Page 2497</p> <p>1 blue/green cover?</p> <p>2 A. I didn't see the cover.</p> <p>3 Q. You didn't see the cover?</p> <p>4 A. I didn't see Dr. Kessler's</p> <p>5 cover, no.</p> <p>6 Q. Did you see Dr. -- the first</p> <p>7 page of the book?</p> <p>8 A. I saw several pages of the book,</p> <p>9 yes.</p> <p>10 Q. Well, was it -- was the book</p> <p>11 in its entirety or was it separated?</p> <p>12 A. I didn't go page for page, no.</p> <p>13 Q. Was it in its entirety? Was it</p> <p>14 a bound book or was it separate pages?</p> <p>15 A. I can't recall.</p> <p>16 Q. How do you know he had a</p> <p>17 complete copy of the book?</p> <p>18 A. Because I thumbed through it and</p> <p>19 it was very similar, in fact, to the Leaf</p> <p>20 Blenders manual.</p> <p>21 Q. So you thumbed through it?</p> <p>22 A. Yeah.</p> <p>23 Q. Was it in entirety in its book</p> <p>24 form or was it separated out; did he show</p>	<p style="text-align: right;">Page 2499</p> <p>1 Q. No, of course it wasn't signed</p> <p>2 by you, it what was Pritchard's copy. But</p> <p>3 it was signed by Pritchard, wasn't it?</p> <p>4 A. No, I don't think so. I think</p> <p>5 somebody else wrote the names on them.</p> <p>6 Q. Okay, sir.</p> <p>7 A. I don't think Pritchard signed</p> <p>8 for that book.</p> <p>9 Q. Okay, fine. In the book that</p> <p>10 you have, why did you give it to Kessler</p> <p>11 if Kessler already had one?</p> <p>12 A. Because I corroborated what he</p> <p>13 had.</p> <p>14 Q. I understand that. You said,</p> <p>15 yeah, that's a Leaf Blenders manual. Why</p> <p>16 did you give him the book? Why did he</p> <p>17 need a book that he already had?</p> <p>18 A. I don't know, ask Dr. Kessler</p> <p>19 that question.</p> <p>20 Q. Did you ask him? Why do you</p> <p>21 want a copy of this book?</p> <p>22 A. No.</p> <p>23 Q. You knew that it was</p> <p>24 confidential. You have testified before</p>
<p style="text-align: right;">Page 2498</p> <p>1 you portions of it?</p> <p>2 A. I think I looked at it and I</p> <p>3 assumed that was the entire book.</p> <p>4 Q. Okay. Now, whose copy of the</p> <p>5 Leaf Blenders manual did Kessler have?</p> <p>6 A. I don't know.</p> <p>7 Q. You didn't check to see?</p> <p>8 A. No.</p> <p>9 Q. They are all numbered, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. How many numbered copies were</p> <p>12 there?</p> <p>13 A. I don't know.</p> <p>14 Q. And they were all signed for,</p> <p>15 weren't they?</p> <p>16 A. That's correct.</p> <p>17 Q. And they were all signed on the</p> <p>18 book, weren't they?</p> <p>19 A. No, I don't believe they were</p> <p>20 signed for on the book.</p> <p>21 Q. Well, the copy you have was</p> <p>22 signed, wasn't it?</p> <p>23 A. Not by my name. I didn't sign</p> <p>24 that book.</p>	<p style="text-align: right;">Page 2500</p> <p>1 that Brown &amp; Williamson viewed it as</p> <p>2 proprietary.</p> <p>3 A. I don't think it's proprietary.</p> <p>4 I didn't testify what was proprietary.</p> <p>5 Q. You knew that Brown &amp; Williamson</p> <p>6 regarded it as such?</p> <p>7 A. Regarded it as confidential.</p> <p>8 Q. Yes. So why did you give him a</p> <p>9 book that he already had?</p> <p>10 A. To corroborate what he had.</p> <p>11 Q. You corroborated it by saying</p> <p>12 here it is, yeah, that's it. Why did you</p> <p>13 give it to him?</p> <p>14 A. I gave it to him. He asked for</p> <p>15 a copy and I gave him a copy.</p> <p>16 Q. Sir, why did he tell you he</p> <p>17 needed had a copy of the Leaf Blenders</p> <p>18 manual?</p> <p>19 A. I didn't ask Dr. Kessler that</p> <p>20 question.</p> <p>21 Q. You didn't ask why?</p> <p>22 A. No.</p> <p>23 Q. He said Jeffrey, just give me a</p> <p>24 copy of that and you said, oh, sure yeah,</p>

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(B&W) PROTECTED BY MINNESOTA TOBACCO LITIGATION PROTECTIVE ORDER

Brown & Williamson vs. Wigand  
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<p>1 just give me a copy back; is that what you 2 said? 3 A. Yeah. I provided a copy to him. 4 Q. Even though he had one sitting 5 there? 6 A. Yeah. 7 Q. Did he ask you for the copy 8 before he showed you he had the same damn 9 thing? 10 A. No. 11 Q. Did you give him any other 12 documents to copy and return to you? 13 A. Yes. 14 Q. Have we got a list of all those 15 documents? 16 A. I believe so. 17 Q. Okay. The Marlboro report? 18 A. Yes. 19 Q. The document produced in this 20 case? Was the Marlboro report a document 21 you produced in this case? 22 A. I think so, yes. 23 Q. What other documents did you 24 give him?</p>	<p>1 the three of them, were they originals? 2 A. I can't tell whether they were 3 originals or copies. 4 Q. You couldn't tell whether the 5 Leaf Blenders manual was original, right? 6 A. No. 7 Q. I see. 8 A. The copy I received anonymously 9 was Mr. Pritchard's copy. 10 Q. Did these all come from your 11 files, these documents, to the best of 12 your recollection? 13 A. No. 14 Q. The documents that were sent to 15 you in these boxes? 16 A. Come from my files? 17 Q. Yes. 18 A. No. 19 Q. Were there documents in these 20 boxes you had never seen before? 21 A. Were there documents in this 22 box? I probably had seen all of them at 23 one time or another during my tenure at 24 Brown &amp; Williamson. There were copies</p>
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<p>1 A. Nicotine document. 2 Q. Can you be more explicit as to 3 what that document is? 4 A. It's the document which Brown &amp; 5 Williamson was evaluating going into the 6 nicotine patch business as an alternative 7 form of delivering nicotine to its users 8 when they couldn't smoke cigarettes. Not 9 for cessation as the nicotine patch 10 originally had intended. It was a 11 possible acquisition of Stow -- or the 12 Stow Patch Technology Company, Inc. 13 Q. Stow Patch Technology? 14 A. Yes. 15 Q. Any other documents you gave 16 him? 17 A. That's what comes to my memory 18 right now. 19 Q. Just -- so there is three 20 documents you gave him? There is three 21 documents you gave him? 22 A. To the best of my recollection 23 at this moment, yes. 24 Q. Were they original copies? Were</p>	<p>1 that I received that were not copies from 2 my files. 3 Q. There were copies that you 4 received that weren't from your files? 5 A. Yes. 6 Q. Could you tell whose files they 7 were from? 8 A. No. 9 Q. Were they from the R &amp; D 10 department? 11 A. I don't know where they were 12 from. I don't know who had copies of it. 13 Q. But you had seen them before? 14 A. I had seen them before, yes. 15 Q. You are sure of that? 16 A. I'm pretty sure of that, yes. 17 Q. Okay. All right. Now, the -- 18 did you ever copy any other documents from 19 the documents that were supplied to you 20 in, shortly after your termination, in 21 those three boxes? Did you ever copy them 22 before 12-95 except the three that you 23 told us with the FDA? 24 A. What do you mean copy?</p>

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<p>1 Q Do you know what copy means?</p> <p>2 A Um-hum.</p> <p>3 Q What does it mean?</p> <p>4 A Did I copy personally or was it</p> <p>5 copied from me? Was a copy made from what</p> <p>6 I provided to others?</p> <p>7 Q Well, as I understand it, sir,</p> <p>8 you testified yesterday you didn't provide</p> <p>9 these documents to anybody except the FDA</p> <p>10 before December, '95; that was your</p> <p>11 testimony, right?</p> <p>12 A Yes.</p> <p>13 Q And I understand your testimony</p> <p>14 also to be that you only gave the FDA</p> <p>15 three documents; right?</p> <p>16 A I believe that's the best of my</p> <p>17 recollection, yes.</p> <p>18 Q So putting those three documents</p> <p>19 that you gave the FDA aside, were any of</p> <p>20 the other documents copied from the time</p> <p>21 you received them, shortly after your</p> <p>22 termination, until December of '95 when</p> <p>23 you gave them all to Scruggs?</p> <p>24 A I don't believe I copied</p>	<p>1 Q And you don't have any knowledge</p> <p>2 of anybody else copying them?</p> <p>3 A That I know of, that's right.</p> <p>4 Q And -- now, did you show them</p> <p>5 those documents to anyone other than the</p> <p>6 people you have told us, Patton,</p> <p>7 Etheridge, Kessler --</p> <p>8 A Wait a minute. Which documents</p> <p>9 are you --</p> <p>10 Q -- before December of '95?</p> <p>11 A You are mixing on me. Which</p> <p>12 documents are you talking about?</p> <p>13 Q I will be very clear.</p> <p>14 A Yeah, please be.</p> <p>15 Q We are talking about the B &amp; W</p> <p>16 documents that you received shortly after</p> <p>17 your termination in three Xerox size</p> <p>18 boxes, there were some in the first and</p> <p>19 second boxes but the bulk of them were in</p> <p>20 the third box; that's your testimony,</p> <p>21 right?</p> <p>22 A That's correct.</p> <p>23 Q Now, my question to you, sir, is</p> <p>24 is that prior to December of 1995, have</p>
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<p>1 anything, no.</p> <p>2 Q Did anybody copy anything?</p> <p>3 A I don't know what anybody did.</p> <p>4 Q Okay, sir. To the best of your</p> <p>5 knowledge, those documents were in your</p> <p>6 possession, custody, control and nobody</p> <p>7 else had possession of those documents</p> <p>8 between the time you received them shortly</p> <p>9 after May and the time that they were</p> <p>10 given to Scruggs, with the exception --</p> <p>11 and I don't want to trick you here, sir.</p> <p>12 I understand you gave certain</p> <p>13 documents to Patton and Etheridge and</p> <p>14 Patton had them for a while until they</p> <p>15 were requested back by your attorneys.</p> <p>16 Put those documents aside. All of the</p> <p>17 other documents that you had in your</p> <p>18 possession, did you copy them or have</p> <p>19 anyone else copy them or to your knowledge</p> <p>20 were they copied by anyone else?</p> <p>21 A I have no knowledge of anybody</p> <p>22 else copying them. I can't tell you what</p> <p>23 happened at the FDA. I could tell you I</p> <p>24 did not copy them.</p>	<p>1 you shown any of those Brown &amp; Williamson</p> <p>2 documents to anyone other than the FDA and</p> <p>3 Kessler, Patton, and Etheridge?</p> <p>4 A Well, Mr. Kessler -- Dr. Kessler</p> <p>5 never saw the documents that were in the</p> <p>6 first two boxes that were turned over to</p> <p>7 Mr. Patton and Mr. Milliman.</p> <p>8 Q No, you testified he saw three</p> <p>9 documents?</p> <p>10 A No, those were turned over.</p> <p>11 Dr. Kessler never saw the others --</p> <p>12 Q Let me make the question clear</p> <p>13 for you, okay, because obviously you don't</p> <p>14 understand what I am saying.</p> <p>15 I am asking you if you ever have</p> <p>16 shown any single, multiple or all, Brown &amp;</p> <p>17 Williamson documents that you received</p> <p>18 after you were fired, okay, and before</p> <p>19 December of '95. Now, I want to know who</p> <p>20 has seen any or all of those documents or</p> <p>21 any one of those documents?</p> <p>22 I know Kessler has seen three of</p> <p>23 them. I know Patton and Etheridge have</p> <p>24 seen a few of them.</p>

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<p>1 A And Milliman. Milliman was 2 there. 3 Q Milliman. 4 MR. MILLIMAN: I can honestly 5 state Jim Milliman never received any 6 documents from Jeffrey Wigand, period, 7 paragraph. 8 MS. WERTHEIMER: The question 9 was did he show the documents. 10 MR. SHEFFLER: It's not a 11 matter of -- 12 THE COURT: Whoa, folks. Mr. 13 Milliman, you said that yesterday, and of 14 course you are not under oath and you are 15 not a witness and you can't be a witness 16 in a contested matter under the ethics 17 rules and you are going to have to think 18 through that what to do. 19 MR. MILLIMAN: I withdraw the 20 statement. But I resent sitting here 21 listening to this stuff. 22 THE COURT: Well, these things 23 happen in lawsuits. You may become a 24 witness if you contest what Dr. Wigand is</p>	<p>1 shown them to? Showing them means, here 2 look at this. And while you have 3 possession, come here and look at these. 4 While you have possession -- you didn't 5 give them, you didn't copy them for them, 6 but you have shown they meant -- do you 7 understand what shown means as I am using 8 it now? 9 A. Dr. Kessler, Jack Mitchell, 10 Mitch Zeller, those are all the people 11 present at that meeting. 12 Q. That's FDA. Patton, 13 Etheridge -- 14 A. That is a very different set of 15 documents. 16 Q. Than what you showed Patton and 17 Etheridge? 18 A. Yes, that's correct. 19 Q. Now, let me ask you this, did 20 any of the documents you showed Patton and 21 Etheridge come from the third box? 22 A. No. I think -- 23 Q. Did any of the documents you 24 showed Kessler come from the first two</p>
Page 2510	Page 2512
<p>1 saying. That's his testimony, that's his 2 version. You may disagree with it but I 3 don't want -- 4 MR. MILLIMAN: I withdraw the 5 statement, your Honor. We will prove it a 6 different way then. 7 MS. WERTHEIMER: It's a 8 different question anyway. 9 MR. SHEFFLER: It may be. But 10 what I am asking him is who he has shown 11 them to and he answered. So far I have 12 got four people, Kessler, Etheridge -- 13 THE WITNESS: FDA. Etheridge, 14 Patton and then later on Scruggs. 15 BY MR. SHEFFLER: 16 Q. FDA? 17 A. FDA. 18 Q. Meaning more than Kessler? 19 A. I gave them to Dr. Kessler. I'm 20 sure -- 21 Q. No, no, I want to know who you 22 showed them to. I'm not asking you who 23 you gave them to, we have been through 24 that. I'm asking who you gave them to or</p>	<p>1 boxes? 2 A. No. 3 Q. Fine. Now, let's just deal with 4 the first two boxes. Other than Patton 5 and Etheridge, have you shown B &amp; W 6 documents from those first two boxes to 7 anyone? 8 A. No. Well -- 9 Q. Prior to December of 1995? 10 A. No. 11 Q. No one. You are sure of that? 12 A. Yes. 13 Q. Prior to December of 1995, did 14 you show the documents in the third box to 15 anyone outside of the FDA? 16 A. No. 17 Q. Okay. You have never shown 18 those documents to any attorneys prior to 19 December of 1995? 20 A. I assume that includes the 21 Department of Justice? 22 Q. You are at liberty to tell me if 23 it's the Department of Justice, but you 24 cannot be compelled to say so.</p>

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<p style="text-align: right;">Page 2513</p> <p>1 A. No.</p> <p>2 Q. You have not shown those</p> <p>3 documents to anybody?</p> <p>4 A. No.</p> <p>5 Q. Any attorney or otherwise before</p> <p>6 December of 1995?</p> <p>7 A. No.</p> <p>8 MS. WERTHEIMER: Could I have</p> <p>9 one clarification? Are you choosing not</p> <p>10 to -- in your no answer, are you including</p> <p>11 or -- I just -- I'm unclear whether when</p> <p>12 he says no, do you take that no to mean</p> <p>13 including the Department of Justice, or</p> <p>14 excluding the Department of Justice?</p> <p>15 MR. SHEFFLER: He can decline</p> <p>16 the answer to question, but I don't think</p> <p>17 he can answer untruthful.</p> <p>18 MS. WERTHEIMER: I'm trying to</p> <p>19 get his clarification. When he says no --</p> <p>20 MR. SHEFFLER: You might tell</p> <p>21 me what no means. No means --</p> <p>22 MS. WERTHEIMER: I don't think</p> <p>23 that's fair. Because in the past</p> <p>24 deposition the Department of Justice was</p>	<p style="text-align: right;">Page 2515</p> <p>1 the Butler case?</p> <p>2 A. I don't believe so.</p> <p>3 Q. Okay. You didn't understand</p> <p>4 that when you gave testimony in</p> <p>5 Mississippi on November 29th, 1995, that</p> <p>6 it was in both a Butler case and a Moore</p> <p>7 case?</p> <p>8 THE COURT: Can we clear for</p> <p>9 our record what the Butler case is? We</p> <p>10 have referred to the other case, the Moore</p> <p>11 case as the Mississippi case.</p> <p>12 MR. SHEFFLER: The Butler case,</p> <p>13 your Honor, was a case also filed in</p> <p>14 Mississippi, also being, the plaintiffs</p> <p>15 are being represented by Motley and his</p> <p>16 crew. And it was basically filed sometime</p> <p>17 before the Moore case.</p> <p>18 But Mr. Wigand was subpoenaed</p> <p>19 and testified in both cases at the same</p> <p>20 time.</p> <p>21 THE COURT: I don't mean to put</p> <p>22 words in the witness's mouth but we have</p> <p>23 been talking about the deposition taken, I</p> <p>24 believe, in November as the deposition for</p>
<p style="text-align: right;">Page 2514</p> <p>1 completely off the table.</p> <p>2 MR. SHEFFLER: I'm not playing</p> <p>3 games. I asked him "anyone" and he knows</p> <p>4 from our discussions yesterday he is not</p> <p>5 compelled to answer if he gave documents</p> <p>6 to the Department of Justice.</p> <p>7 THE COURT: And he declined on</p> <p>8 occasion to answer.</p> <p>9 MS. WERTHEIMER: Are you</p> <p>10 answering no or declining to answer?</p> <p>11 THE WITNESS: No to anybody else</p> <p>12 and I decline to answer on the Department</p> <p>13 of Justice.</p> <p>14 Q. That's before December of '95,</p> <p>15 okay. Now, sir, did there not come a time</p> <p>16 when you received a subpoena to testify in</p> <p>17 the Moore case, in re: Moore?</p> <p>18 A. Um-hum.</p> <p>19 Q. And did there not come a time</p> <p>20 when you got a subpoena to testify in the</p> <p>21 Butler case?</p> <p>22 A. I don't think I received a</p> <p>23 subpoena in the Butler case.</p> <p>24 Q. Okay. Did you ever testify in</p>	<p style="text-align: right;">Page 2516</p> <p>1 the Moore case. Is it conceivable -- is</p> <p>2 it possible that the same deposition was</p> <p>3 also used in the Butler case without his</p> <p>4 knowledge?</p> <p>5 MR. SHEFFLER: That's what we</p> <p>6 are trying to find out. I asked him if he</p> <p>7 has ever been subpoenaed and that's what I</p> <p>8 am asking for. The question on the table</p> <p>9 is did he realize that the deposition he</p> <p>10 gave in the Moore case was also being</p> <p>11 noticed to be used in the Butler case.</p> <p>12 THE COURT: Do you know the</p> <p>13 answer to that?</p> <p>14 THE WITNESS: I don't know the</p> <p>15 answer to that, sir.</p> <p>16 Q. Did you ever hear about the</p> <p>17 Butler case before today?</p> <p>18 A. Before today?</p> <p>19 Q. Yes.</p> <p>20 A. I have heard of the Butler case</p> <p>21 for the last year, I believe.</p> <p>22 Q. When was the first time you</p> <p>23 heard about it?</p> <p>24 A. Late -- well, maybe early to</p>

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<p style="text-align: right;">Page 2517</p> <p>1 mid-1996. 2 Q. Early to mid-1996. So you 3 hadn't heard about it by the time -- 4 A. I had not heard about it before 5 the deposition in Mississippi. 6 Q. Did you hear about it at the 7 deposition in Mississippi? 8 A. I'm not sure, I don't recall. 9 Q. Did anybody ever talk to you 10 about the Butler case at all? 11 A. No. 12 Q. Do you know what the issues are 13 involved in the Butler case? 14 A. No. 15 Q. Do you know who the defendants 16 are in the Butler case? 17 A. No. 18 Q. Do you know if Brown &amp; 19 Williamson is a defendant in the Butler 20 case? 21 A. I believe they are. 22 Q. Okay. So what do you know in 23 addition to the fact that it's in 24 Mississippi and Brown &amp; Williamson is a</p>	<p style="text-align: right;">Page 2519</p> <p>1 that you did testify in that case, at 2 least partially? 3 A. That's correct. 4 Q. Your deposition is not 5 concluded, is it? 6 A. That's correct. 7 Q. Have you had any discussions 8 about the resumption of that deposition? 9 A. Yes. 10 Q. When were those discussions? 11 A. At the issuance of Judge Penn's 12 order. 13 Q. Is that the first time you had a 14 discussion about that? 15 A. In terms of continuation of it, 16 yes. 17 Q. Did you have any discussions 18 before then about the resumption, resuming 19 it, continuing, dates for deposition 20 before Judge Penn's order? 21 A. Not that I can recall. 22 Q. Do you recall when Judge Penn's 23 order was entered? 24 A. Sometime in December of 1995.</p>
<p style="text-align: right;">Page 2518</p> <p>1 defendant? Do you know anything else 2 about the Butler case? 3 A. I think it may involve 4 environmental tobacco smoke. 5 Q. Okay. Do you know anything else 6 about it? 7 A. That's all I can recall. 8 Q. And who did you get this 9 information from? 10 A. Newspapers. 11 Q. Okay. Nobody -- Mr. Motley 12 never said a word to you about the Butler 13 case? 14 A. Not that I know of, no. 15 Q. Never even mentioned the name of 16 it? 17 A. I can't testify to that, that he 18 never mentioned the name. 19 Q. Okay. But you don't recall him 20 ever telling you anything -- 21 A. I never sat down with Mr. Motley 22 and discussed the Butler case, no. 23 Q. Let's talk about the Moore case. 24 The Moore case, you recognize and realize</p>	<p style="text-align: right;">Page 2520</p> <p>1 Q. Well, okay. Let me ask the 2 question this way, sir. When do you 3 recall having discussions, the first 4 discussion about the resumption of the 5 deposition in the Moore case? 6 THE COURT: Are you asking him 7 about discussions with Mr. Motley or with 8 anybody? 9 MR. SHEFFLER: With anyone. 10 Because I don't know -- he claims Motley 11 has never talked to him, so I don't know 12 how -- in any event. 13 MS. WERTHEIMER: That's not a 14 fair characterization. He said Motley 15 didn't talk to him about the Butler case. 16 MR. SHEFFLER: Yesterday he 17 said testified Motley didn't talk to him 18 about any of the sailing and boating 19 either. 20 MS. WERTHEIMER: Before the 21 deposition. 22 Q. Did Motley ever talk to you 23 about the Moore case? 24 MR. ALDOCK: Ever in his life?</p>

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<p style="text-align: right;">Page 2521</p> <p>1 Q After the deposition, let's put 2 it that way. Did Motley ever talk to you 3 about the Moore case after the deposition? 4 A Briefly. 5 Q When? 6 A In passing; I can't recall it 7 specifically. 8 Q In passing when you were passing 9 each other down in South Carolina when he 10 flew you down there? 11 A Yeah, could have been then, yes. 12 Q What did he say? 13 A Nothing in specific. We tend 14 not to talk about tobacco or at least the 15 issues on the table. 16 Q You tend not to talk about 17 tobacco? 18 A Yes. 19 Q He flew you down for three days, 20 two days and two days, and in those 21 episodes, those seven days, you didn't 22 talk about tobacco? 23 A I wouldn't say I talked tobacco 24 all the time. I talked in general terms</p>	<p style="text-align: right;">Page 2523</p> <p>1 matters; as a consultant, in tobacco 2 matters; and also you had discussions with 3 him as your attorney, right? 4 A Yes. 5 Q When you had discussions with 6 him with respect to the Moore case, in 7 what relationship were you with Mr. 8 Motley? Was it just talking as friends, 9 was it talking as a consultant, fact 10 witness, or was it talking to him as your 11 attorney? Which of those in your mind? 12 A My attorney. 13 Q Okay. So you are saying that he 14 is your attorney with respect to 15 discussions involving the Moore case? 16 A No, he is my personal attorney. 17 Q I'm asking you, sir -- 18 A And I'm involved in lots of 19 litigation. 20 Q -- with respect to the 21 conversations about Moore that you have 22 had with Mr. Motley, with respect to the 23 conversations, the in-passing 24 conversations you had with Moore, okay?</p>
<p style="text-align: right;">Page 2522</p> <p>1 of tobacco, yes. 2 Q Did he fly you down there 3 because you are his personal friend and 4 you wanted to spend the weekend together? 5 A I think that's part of it, yes. 6 Q So you are a personal friend of 7 Motley's? 8 A I think I have developed a 9 relationship with Mr. Motley, yes. 10 Q When did you develop this 11 relationship? 12 A During 1996. 13 Q Okay. Now, you told us three 14 occasions when you met with Motley. When 15 did you develop the personal relationship 16 so that he would fly you down as his 17 friend? 18 A I didn't say as his friend only. 19 I said as I became associated with Mr. 20 Motley and as my personal attorney we 21 developed a friendship. 22 Q Okay, sir. So Mr. Motley now -- 23 you have had discussions with him as a 24 friend on personal, just straight personal</p>	<p style="text-align: right;">Page 2524</p> <p>1 MR. ALDOCK: He says passing 2 conversations. That includes just 3 mentioning the case, you try to move it 4 into substantive conversations. 5 Q Okay. Did you do anything more 6 than -- 7 A I have had no -- let me 8 clarify. I have had no substantive 9 conversations with Mr. Motley relative to 10 Butler and/or Moore. 11 Q Have you talked to Mr. Moore 12 about the Moore case, Mike Moore? 13 A Not since November of 1994. 14 MS. WERTHEIMER: '94? 15 THE WITNESS: '95, I'm sorry. 16 Q So you talked to Mr. Moore in 17 1995, November? That was at the time of 18 the deposition; around the time of the 19 deposition? 20 A Around the time of the 21 deposition. 22 Q Okay. You were down there on the 23 28th and 29th; correct? 24 A If you say so, yeah.</p>

<p>Page 2525</p> <p>1 Q I'm asking you. Were you down 2 there? 3 A I can't recall specifically. 4 Q You were down there on the 28th, 5 we know that, don't we? You were down 6 there on the 29th, were you not? 7 A I may have been, I can't recall. 8 Q You testified on the 29th in 9 Pascagoula, Mississippi. 10 A I assume. I was probably there 11 but that's what I assume. 12 Q Did you leave immediately after 13 your testimony? 14 A Yes. 15 Q So did you -- when did you 16 speak with Moore then? Was it before the 17 deposition? 18 A In passing. No substantive 19 conversation. 20 Q And did you talk to Don 21 Barrett? Have you ever met Don Barrett? 22 A I wouldn't know Don Barrett if I 23 fell over him. I'm not sure I know him. 24 Q How about an attorney by the</p>	<p>Page 2527</p> <p>1 of the deposition? 2 A Have I seen any portions? Other 3 than what's been on the Internet? 4 Q Well, I don't know. Have you 5 seen it on the Internet? 6 A I have seen parts of it on the 7 Internet, yes. Everybody has seen it. 8 Q I'm asking about you. 9 A I think I have seen it on the 10 Internet. 11 Q You have? Did you read it? 12 A Partly, yes. 13 Q Partly? 14 A Um-hum. 15 Q This was your testimony, you 16 weren't interested in reading it? 17 A No. Because it was going to be 18 resumed. 19 Q Well, I understand it was going 20 to be resumed but weren't you curious as 21 to what the deposition looked like? 22 A No, not really. 23 Q Okay. I see. Did you ever get 24 a copy of any portions of the deposition</p>
<p>Page 2526</p> <p>1 name of Leger, Walter Leger? 2 A No. 3 Q Never talked to him? 4 A No. 5 Q Now, sir, who was it that talked 6 to you about resuming the deposition then? 7 A I think Mr. Scruggs may have 8 talked to me about it. But I just -- 9 there has been no substantive conversation 10 on resuming the deposition. 11 Q No one ever asked you what your 12 availability at the end of May to further 13 testify in the case? 14 A No. 15 Q No one talked to you about 16 resuming the deposition in February of 17 1996? 18 A No. It's been indefinitely 19 postponed. 20 Q No one has ever talked to you 21 about any times that you have available to 22 resume the deposition? 23 A No. 24 Q Have you ever seen any portions</p>	<p>Page 2528</p> <p>1 other than from perhaps the Internet? 2 A No. 3 Q Did you ever see any of the 4 video of the deposition? 5 A No. 6 Q And you have never talked to any 7 of your attorneys about the deposition 8 testimony itself? 9 A No. 10 MR. ALDOCK: Excluding the 11 attorneys he has now? 12 Q Excluding the attorneys that 13 represent you in this action, Shea &amp; 14 Gardener? 15 A No. 16 Q Excluding Shea &amp; Gardener? 17 A I talked to -- I talked to I 18 guess Doheny and Thompson, I think. Is 19 that considered part of it? 20 Q You talked to them about the 21 deposition -- 22 A Afterwards. 23 Q -- testimony? 24 A No, not about testimony, no.</p>

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<p style="text-align: right;">Page 2529</p> <p>1 Q. I'm unclear. Did you or didn't 2 you?</p> <p>3 MR. ALDOCK: Are you 4 saying about the deposition that includes 5 the fact of it.</p> <p>6 Q. Did you talk to them about 7 testimony?</p> <p>8 A. Be more specific with your 9 question.</p> <p>10 Q. Did Frank Doheny know that you 11 were going down to testify in that 12 deposition before you went?</p> <p>13 A. I don't know. You have to ask 14 Mr. Doheny.</p> <p>15 Q. You didn't notify him that you 16 were going down to Mississippi to testify 17 in the Moore case; did you?</p> <p>18 A. I don't think I had.</p> <p>19 Q. He didn't know that you were 20 going down --</p> <p>21 A. I don't think so.</p> <p>22 Q. -- on the 28th of November to 23 testify in the Moore case, did he?</p> <p>24 A. I don't know what he knows, no.</p>	<p style="text-align: right;">Page 2531</p> <p>1 A. As well as Mr. Scruggs.</p> <p>2 Q. He was the attorney of record in 3 this case; correct?</p> <p>4 A. And Mr. Scruggs was also my 5 attorney.</p> <p>6 Q. Let me just ask you this: Did 7 you do think you had an obligation to talk 8 to Mr. Doheny or not about the TRO and its 9 effect on deposition subpoenas?</p> <p>10 A. No.</p> <p>11 Q. So when was the first time you 12 talked to Mr. Doheny about the deposition 13 occurring in Moore?</p> <p>14 A. Probably afterwards.</p> <p>15 Q. How long afterwards?</p> <p>16 A. I can't recall.</p> <p>17 Q. Okay. Have you been listed to 18 be a witness in any other case to your 19 knowledge than the ones we have talked 20 about; Butler, Moore and this case? Have 21 you been listed as a witness in any other 22 case, concerning tobacco, I'm not talking 23 about any domestic matters, I'm just 24 talking about tobacco.</p>
<p style="text-align: right;">Page 2530</p> <p>1 Q. You didn't tell him?</p> <p>2 A. I didn't tell him.</p> <p>3 Q. Okay. Did you think that you 4 had an obligation to tell your attorney 5 about your testimony in Moore, the 6 attorney representing you in this action? 7 Did you think you had an obligation to do 8 that?</p> <p>9 A. I may have, but I didn't.</p> <p>10 Q. Why not?</p> <p>11 A. I just didn't.</p> <p>12 Q. Did you think that you had an 13 obligation to discuss with your attorney 14 in this action, since there was a pending 15 order of the court requiring you to do 16 certain things when you were subpoenaed 17 for deposition? Did you think you had an 18 obligation to talk to your attorney about 19 that?</p> <p>20 A. Mr. Scruggs is also my attorney 21 at that time.</p> <p>22 Q. Mr. Doheny was your attorney in 23 this case, correct, at the time of the 24 Moore deposition?</p>	<p style="text-align: right;">Page 2532</p> <p>1 A. Not to my knowledge.</p> <p>2 Q. Have you ever heard of the case 3 called Carter?</p> <p>4 A. No.</p> <p>5 Q. Have you ever heard of an 6 attorney called Woody Wilner?</p> <p>7 A. Yes.</p> <p>8 Q. Has he ever contacted you?</p> <p>9 A. No.</p> <p>10 Q. Have you ever written or 11 communicated to him in any way?</p> <p>12 A. No.</p> <p>13 Q. Have you ever given permission 14 to him or anyone in his office to list you 15 as a witness?</p> <p>16 A. No.</p> <p>17 Q. Did you tell Mr. Scruggs about 18 the existence of the TRO in this case?</p> <p>19 A. I don't recall.</p> <p>20 Q. Did you know that the TRO in 21 this case -- strike that.</p> <p>22 When did you first learn that 23 there was a TRO or temporary restraining 24 order; do you know what I am talking about</p>



<p style="text-align: right;">Page 2533</p> <p>1 when I say a TRO?</p> <p>2 A. Um-hum.</p> <p>3 Q. When was the first time that you</p> <p>4 were aware of the TRO?</p> <p>5 A. I can't recall.</p> <p>6 Q. It was before the Moore</p> <p>7 deposition; was it not?</p> <p>8 A. I believe it was -- it probably</p> <p>9 was before the Moore deposition but I</p> <p>10 can't recall specifically.</p> <p>11 Q. Did you ever get a copy of the</p> <p>12 TRO?</p> <p>13 A. I'm sure I have gotten a copy,</p> <p>14 yes.</p> <p>15 Q. Was it served upon you, sir,</p> <p>16 with a copy of the complaint in this</p> <p>17 action?</p> <p>18 A. Was it served on me?</p> <p>19 Q. Do you know what served means?</p> <p>20 A. Yeah, I think I do.</p> <p>21 Q. Okay. Was it served on you with</p> <p>22 a copy of the complaint in this action?</p> <p>23 A. I believe so.</p> <p>24 Q. Did you discuss the TRO with</p>	<p style="text-align: right;">Page 2535</p> <p>1 THE COURT: If your objection</p> <p>2 was to violation rather than to</p> <p>3 conversation then that's --</p> <p>4 MR. SHEFFLER: I'm going to</p> <p>5 rephrase the question.</p> <p>6 BY MR. SHEFFLER:</p> <p>7 Q. Have you discussed with your</p> <p>8 attorneys what a violation of a TRO would</p> <p>9 be?</p> <p>10 THE COURT: Can we change</p> <p>11 "violation" to what the TRO required of</p> <p>12 him? Is that what you are really after?</p> <p>13 What is the temporary restraining order --</p> <p>14 MR. SHEFFLER: Yes, your Honor.</p> <p>15 THE COURT: That would require</p> <p>16 you to do or prevent you from doing?</p> <p>17 THE WITNESS: I think I</p> <p>18 understood what the TRO prevented me from</p> <p>19 doing.</p> <p>20 THE COURT: What was your</p> <p>21 understanding is what he is asking you.</p> <p>22 THE WITNESS: Of releasing any</p> <p>23 information relative to Brown &amp;</p> <p>24 Williamson. I was under a federal</p>
<p style="text-align: right;">Page 2534</p> <p>1 your attorneys?</p> <p>2 A. Yes.</p> <p>3 Q. Did your attorneys -- strike</p> <p>4 that.</p> <p>5 Did you discuss the violation of</p> <p>6 this TRO with Mr. Scruggs?</p> <p>7 MR. ALDOCK: Objection.</p> <p>8 MR. SHEFFLER: I will withdraw</p> <p>9 the question, your Honor, rephrase it.</p> <p>10 THE COURT: There is some --</p> <p>11 that's not an improper question, though.</p> <p>12 MR. ALDOCK: He is assuming the</p> <p>13 legal conclusion, that it's been violated.</p> <p>14 THE COURT: Well, there is a</p> <p>15 motion on the table, as I understand it,</p> <p>16 for contempt. And of course, as we know,</p> <p>17 advice of counsel is potential defense as</p> <p>18 long as a reason be given. And I think</p> <p>19 they should be permitted -- they have got</p> <p>20 to know going in what defenses he is</p> <p>21 claiming.</p> <p>22 MR. ALDOCK: That's fair. He</p> <p>23 can't just the word "violation". He can</p> <p>24 ask the question.</p>	<p style="text-align: right;">Page 2536</p> <p>1 subpoena, to give testimony.</p> <p>2 THE COURT: He is not asking</p> <p>3 you that. He is asking you about the</p> <p>4 temporary restraining order in the</p> <p>5 Kentucky case. What did it prevent you</p> <p>6 from doing?</p> <p>7 THE WITNESS: Discussing Brown</p> <p>8 &amp; Williamson material.</p> <p>9 Q. Okay. Did it --</p> <p>10 A. In the broadest sense of making</p> <p>11 disparaging remarks I think was what it</p> <p>12 was written in.</p> <p>13 Q. Okay. Did it also require you,</p> <p>14 if you had a subpoena, to give notice to</p> <p>15 Brown &amp; Williamson and give Brown &amp;</p> <p>16 Williamson an opportunity to talk with you</p> <p>17 and to cooperate with them?</p> <p>18 A. Yes.</p> <p>19 Q. You understood that too?</p> <p>20 A. And that notice was provided to</p> <p>21 Brown &amp; Williamson. And they elected not</p> <p>22 to take avail of it.</p> <p>23 Q. Let me ask you this, sir: When</p> <p>24 was the first time you knew you were going</p>

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<p style="text-align: right;">Page 2537</p> <p>1 to Mississippi to testify?</p> <p>2 A. I can't recall. But notice was</p> <p>3 provided to Brown &amp; Williamson.</p> <p>4 Q. You have to answer my questions.</p> <p>5 A. Okay.</p> <p>6 Q. When was the first time -- and I</p> <p>7 know -- if it's not specific give me a</p> <p>8 general range. Was it the day before you</p> <p>9 went?</p> <p>10 A. Could have been, yeah.</p> <p>11 Q. Could it have been the week</p> <p>12 before you went?</p> <p>13 A. No.</p> <p>14 Q. Did you not -- when was the</p> <p>15 first time you were served with process, a</p> <p>16 subpoena in the case of Moore or Butler?</p> <p>17 A. I can't recall but I have to</p> <p>18 refresh my memory by looking at the</p> <p>19 papers.</p> <p>20 Q. Okay. Would it be correct to</p> <p>21 say, sir, that when you were served with a</p> <p>22 subpoena, you realized that you were going</p> <p>23 to be asked to testify in Moore?</p> <p>24 A. I believe that's correct.</p>	<p style="text-align: right;">Page 2539</p> <p>1 in Mississippi, would be a violation of</p> <p>2 the TRO?</p> <p>3 A. I didn't believe I was violating</p> <p>4 the TRO.</p> <p>5 Q. I know you didn't believe it.</p> <p>6 But I'm trying to find out why. Did you</p> <p>7 discuss it with Scruggs?</p> <p>8 A. Because I had a subpoena from</p> <p>9 the United States Government, I was</p> <p>10 responding to. And I</p> <p>11 subsequently -- while I was in</p> <p>12 Mississippi, I had a court order from a</p> <p>13 Mississippi judge.</p> <p>14 Q. Sir, did you discuss it with Mr.</p> <p>15 Scruggs or not?</p> <p>16 A. I can't remember.</p> <p>17 Q. Did you discuss it with Mr.</p> <p>18 Doheny or anyone in Mr. Doheny's office?</p> <p>19 A. When?</p> <p>20 Q. Prior to the deposition.</p> <p>21 A. Not to my recollection.</p> <p>22 Q. Okay. In fact, you didn't</p> <p>23 discuss the fact of the deposition prior</p> <p>24 to its occurrence with Mr. Doheny, did</p>
<p style="text-align: right;">Page 2538</p> <p>1 Q. Okay. Would it be correct, sir,</p> <p>2 that when you were first asked to be flown</p> <p>3 down to Mississippi you knew you were</p> <p>4 going to be served with subpoena?</p> <p>5 A. I didn't know that. I think I</p> <p>6 testified to that already.</p> <p>7 Q. All right. Now, did you discuss</p> <p>8 with Mr. Scruggs whether your trip to</p> <p>9 Mississippi and testimony in Moore was</p> <p>10 going to be a violation of the TRO; did</p> <p>11 you discuss it with him?</p> <p>12 A. I was responding to a federal</p> <p>13 CID.</p> <p>14 MS. WERTHEIMER: Answer his</p> <p>15 question.</p> <p>16 THE WITNESS: I don't recall a</p> <p>17 discussion with Mr. Scruggs on that</p> <p>18 matter.</p> <p>19 Q. You don't recall ever discussing</p> <p>20 it with him before the Moore deposition --</p> <p>21 A. No.</p> <p>22 Q. -- at all? You never recall</p> <p>23 discussing with Scruggs whether or not</p> <p>24 your going to Mississippi, your testimony</p>	<p style="text-align: right;">Page 2540</p> <p>1 you?</p> <p>2 A. No.</p> <p>3 Q. Okay. Was there any lawyer who</p> <p>4 you discussed the temporary restraining</p> <p>5 order and its effect on your participation</p> <p>6 in the Moore deposition? Was there any</p> <p>7 attorney that you talked about that with?</p> <p>8 A. Before?</p> <p>9 Q. Before the Moore deposition.</p> <p>10 A. Not that I can recall.</p> <p>11 Q. I'm just going to throw these</p> <p>12 names out just to eliminate them.</p> <p>13 Margolin?</p> <p>14 A. I can't remember a specific</p> <p>15 conversation.</p> <p>16 Q. So it's your testimony today</p> <p>17 that no attorney advised you with respect</p> <p>18 to the temporary restraining order's</p> <p>19 effect on your going down to Mississippi</p> <p>20 to testify in Moore prior to the</p> <p>21 deposition of Moore?</p> <p>22 A. I can't recall a specific</p> <p>23 conversation.</p> <p>24 Q. Can you recall a general</p>

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1 conversation?

2 THE COURT: To clear up our

3 record, when you mention Frank Doheny, are

4 you including Todd Thompson?

5 MR. SHEFFLER: Thank you, your

6 Honor. When I said Frank Doheny, Todd

7 Thompson, anybody in his office. I

8 thought Todd Thompson was in his office.

9 THE COURT: He is and Marvin

10 Heard was at that time too.

11 MR. SHEFFLER: Okay. Any of

12 those attorneys.

13 THE COURT: You have mentioned

14 several in that office.

15 THE WITNESS: Mike Hirn.

16 THE COURT: Mike Hirn, I'm

17 sorry.

18 BY MR. SHEFFLER:

19 Q. Any of those attorneys; have you

20 talked to any of them?

21 A. I can't recall.

22 Q. You said specific, I just want

23 to make sure we have this. Can you recall

24 generally talking to them about the TRO

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1 and its effect on the Moore deposition

2 that you were going to down to testify in?

3 A. Not that I can recall.

4 Q. Not that you recall. You

5 recognize that there is a charge of

6 contempt in this case for violating a

7 temporary restraining order issued by the

8 court in Kentucky?

9 A. I also understand I had

10 conflicting orders from different judges

11 and different courts.

12 Q. Are you relying upon the advice

13 of your counsel as a defense to that

14 contempt charge?

15 A. I'm relying --

16 Q. Let me make the question clear.

17 Are you relying as a defense to that

18 charge that you were advised by counsel

19 with respect to your actions in going down

20 to Mississippi and testifying in the Moore

21 case?

22 THE COURT: Are you asking him

23 about advice prior to going, not

24 subsequent?

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1 MR. SHEFFLER: Prior to going.

2 MR. ALDOCK: Hold on one second.

3 (Discussion held off the

4 record.)

5 MR. ALDOCK: I will object to

6 the form of that, your Honor. It seems to

7 me they can ask him facts but they can't

8 ask him the legal conclusion of whether he

9 is relying on, because he doesn't know

10 what he is relying on. They can ask him

11 factual questions but they can't ask him a

12 legal question.

13 THE COURT: Except have we not

14 established -- has not Mr. Sheffler

15 established that -- if I understand the

16 witness correct, he is saying he didn't

17 discuss it with any lawyer.

18 MR. ALDOCK: I quite agree. And

19 he can take that for what it's worth and

20 run with it, and he will. But I don't

21 think he can ask the ultimate legal

22 question to the layman. He can get his

23 conclusion in the ways that your Honor has

24 said maybe he has already got it. But he

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1 can't ask him the legal question.

2 MR. SHEFFLER: I'm not sure

3 this is necessarily legal. I'm asking him

4 if at the time he was relying upon advice

5 of counsel --

6 THE COURT: I think it's a

7 proper question.

8 MR. SHEFFLER: -- he said he

9 knew -- thank you.

10 (Discussion held off the

11 record.)

12 BY MR. SHEFFLER:

13 Q. Anytime you are ready to answer

14 the question go ahead.

15 A. Why don't you restate the

16 question.

17 MR. SHEFFLER: Would you read

18 the question back?

19 A. There was a lot of sidebar.

20 Q. All right. Sir, are you relying

21 upon any discussions or advice of counsel

22 that was given to you prior to going and

23 testifying -- prior to your testifying

24 in Moore with respect to your defenses to

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(B&W) PROTECTED BY MINNESOTA TOBACCO LITIGATION PROTECTIVE ORDER

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<p>1 the charge of contempt?</p> <p>2 A. Yes.</p> <p>3 Q. And whose advice are you relying</p> <p>4 upon?</p> <p>5 A. Mr. Scruggs.</p> <p>6 Q. When did Mr. Scruggs give you</p> <p>7 advice with respect to the TRO and the</p> <p>8 deposition of Moore?</p> <p>9 A. When I was in Mississippi.</p> <p>10 Q. Okay, sir. When in Mississippi?</p> <p>11 Because you have been in Mississippi a</p> <p>12 number of times, was it the time you went</p> <p>13 down on Moore case?</p> <p>14 A. It was day of giving the CID</p> <p>15 deposition to the Department of Justice.</p> <p>16 Q. That was November 29th, 1995.</p> <p>17 A. I believe that's the date we</p> <p>18 were using.</p> <p>19 Q. Okay. Now, when you gave the</p> <p>20 deposition in the CID, that was the</p> <p>21 morning before the deposition in Moore; is</p> <p>22 that right?</p> <p>23 A. Um-hum.</p> <p>24 Q. Was Mr. Scruggs advising you</p>	<p>1 (Mr. Wigand confers with counsel</p> <p>2 off the record.)</p> <p>3 I'm not exactly sure when the</p> <p>4 advice came.</p> <p>5 Q. Okay. Now, when you say when</p> <p>6 the advice came you are talking about the</p> <p>7 advice with respect to the Moore case or</p> <p>8 the advice with respect to the CID?</p> <p>9 A. In regards to the TRO.</p> <p>10 Q. Okay. Now, did you get advice</p> <p>11 from Scruggs with regards to the TRO and</p> <p>12 the CID testimony or the TRO and the Moore</p> <p>13 testimony or both?</p> <p>14 A. I believe I got advice on both.</p> <p>15 Q. And you are not sure whether</p> <p>16 that advice came on the day of the Moore</p> <p>17 deposition and the CID depositions or</p> <p>18 before?</p> <p>19 A. I believe the letter from John</p> <p>20 Reed of the Department of Justice was</p> <p>21 pretty clear that I was to appear.</p> <p>22 Q. Look, Mr. Wigand, please, we</p> <p>23 really do want to try to wrap up as</p> <p>24 quickly possible. That's not responsive.</p>
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<p>1 prior to that CID deposition or after</p> <p>2 about the Moore case and the violation of</p> <p>3 the TRO?</p> <p>4 A. After.</p> <p>5 Q. Did Mr. Scruggs give you any</p> <p>6 advice with respect to the testimony you</p> <p>7 were giving in the CID?</p> <p>8 A. He was in the CID.</p> <p>9 Q. I understand that. Did he give</p> <p>10 you any advice with respect to whether</p> <p>11 testifying at the CID was a violation of</p> <p>12 the TRO?</p> <p>13 A. I believe what I was -- my</p> <p>14 understanding was that the federal</p> <p>15 subpoena took precedence over any other</p> <p>16 order. And I responded to the federal</p> <p>17 CID.</p> <p>18 Q. I understand that's one of your</p> <p>19 defenses, sir. My question is a different</p> <p>20 question. My question is, did he give you</p> <p>21 any advice with respect to the violation</p> <p>22 or potential violation of the TRO and your</p> <p>23 testimony at the CID?</p> <p>24 A. I believe that --</p>	<p>1 I'm asking you about when?</p> <p>2 A. I don't know, I cannot recall</p> <p>3 exactly when.</p> <p>4 Q. It's a very important thing so</p> <p>5 I'm am going to try to press you on this</p> <p>6 if I can.</p> <p>7 A. Press all you want.</p> <p>8 Q. When did you first meet Scruggs</p> <p>9 after the issuance of the TRO?</p> <p>10 A. The day I flew down to</p> <p>11 Mississippi.</p> <p>12 Q. That was the first time you met</p> <p>13 him to talk about anything about after the</p> <p>14 issuance of the TRO?</p> <p>15 A. Yes, that's the first time I met</p> <p>16 him. You asked me when I first met</p> <p>17 Scruggs; after the issuance of the TRO.</p> <p>18 Q. You want to confer with him for</p> <p>19 a second? I thought you looked a little</p> <p>20 puzzled. Maybe you better confer with him</p> <p>21 if you would like to.</p> <p>22 (Mr. Wigand confers with counsel</p> <p>23 off the record.)</p> <p>24 THE COURT Before we break</p>

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<p>Page 2549</p> <p>1 let's clear up one thing. I think there 2 is some confusion over whether you are 3 asking him when did he first meet Mr. 4 Scruggs, blanket period, or when did you 5 first meet Mr. Scruggs after the temporary 6 restraining order was issued. 7 MR. SHEFFLER: That's exactly -- 8 I want to know when he first met Scruggs 9 after the TRO. 10 MS. WERTHEIMER: When you mean 11 met, do you mean physically meet him? 12 THE VIDEOGRAPHER: I am still on 13 the record on this. 14 THE COURT: Yes, we are still on 15 the record. 16 MR. ALDOCK: Let's go off the 17 record. 18 THE COURT: I think this ought 19 to stay on. Stay on a minute. 20 MS. WERTHEIMER: When I heard 21 your question, I thought you meant 22 physically meet fact to face. Do you mean 23 that or do you mean -- 24 MR. SHEFFLER: The first</p>	<p>Page 2551</p> <p>1 just plain factual from records. If I 2 understand correctly, the Kentucky TRO, 3 the temporary restraining order issued in 4 this action, Brown &amp; Williamson versus Dr. 5 Wigand, was issued and served on 6 Dr. Wigand on November 21, 1995. 7 The testimony by Dr. Wigand in 8 the Mississippi Moore case, was November 9 29, 1995. 10 So we are working within those 11 perimeters there of about eight days 12 roughly. Is that essentially correct? 13 MR. ALDOCK: Yes. 14 THE COURT: 11-29 is the depo, 15 as I understand it and served with the 16 restraining order on November 21. 17 THE WITNESS: 11-21 was the 18 Mississippi subpoena. 19 THE COURT: I don't think we 20 have established the date of the subpoena 21 yet. 22 MS. WERTHEIMER: I think they 23 have previously, your Honor. 24 THE COURT: It may have been in</p>
<p>Page 2550</p> <p>1 question was met. The second question 2 will be communicate. 3 MS. WERTHEIMER: Okay. But I 4 just want to make sure we are on the first 5 question and it's physically meet. 6 MR. SHEFFLER: Right. 7 MS. WERTHEIMER: The TRO issued 8 on the 21st of November. 9 THE COURT: And served on -- 10 MR. SHEFFLER: I think it was 11 the 21st. 12 MS. WERTHEIMER: The 21st. 13 THE COURT: Issued the 21st, 14 served the 21st. 15 MR. SHEFFLER: Okay. 16 (Recess taken.) 17 THE COURT: Are we ready? 18 THE VIDEOGRAPHER: Going back on 19 the record, the time is approximately 20 10:12. 21 THE COURT: Let's see what we 22 have established here. If I understand 23 correctly -- and these are things that 24 should not be in dispute, I think they are</p>	<p>Page 2552</p> <p>1 the July depo, but I don't think there 2 morning we have talked about the date of 3 the issuance of the subpoena. Let's go 4 from there now. 5 MR. SHEFFLER: The question 6 that was pending when we broke that Mr. 7 Wigand conferred with counsel about was 8 the first time that he met with Scruggs, 9 after the issuance of the TRO and before 10 the testimony in Moore. 11 THE COURT: Right. 12 THE WITNESS: I believe I met 13 Mr. Scruggs the evening of the 28th. 14 THE COURT: The evening before 15 your deposition was taken? 16 THE WITNESS: Yeah. 17 THE COURT: All right. 18 BY MR. SHEFFLER: 19 Q. Okay. Now, prior to November 20 28th, and after the TRO had been served 21 upon you, had you had any discussions with 22 Mr. Scruggs about the TRO? 23 A. I believe I did. 24 Q. When?</p>

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Multi-Page November 13, 1996, Depo of Jeffrey Wigand

<p>Page 2553</p> <p>1 A. I believe I had telephone 2 conversations with him on and off between 3 the 21st and the 29th -- the 28th. 4 Q. In those conversations, did you 5 discuss the effect of the TRO on any 6 testimony that you would be asked to give 7 in the Moore case? 8 A. No. 9 Q. Did Mr. Scruggs have a copy of 10 the TRO? 11 A. I believe he may have. I'm not 12 for sure. 13 Q. When do you believe he first had 14 the copy of the TRO? 15 A. I'm not sure. 16 Q. In your discussions of the TRO, 17 did you discuss whether or not it would be 18 a violation of the TRO to testify in the 19 Moore case? 20 A. No. 21 Q. Did you ever have that 22 discussion with Mr. Scruggs? 23 A. Yes. 24 Q. When did that occur?</p>	<p>Page 2555</p> <p>1 A. Not to my recollection, no. 2 Q. Did Scruggs tell you that he 3 sent -- that he got a copy of the TRO 4 from Doheny? 5 A. Not to my recollection. 6 Q. Did you give Scruggs a copy of 7 the TRO? 8 A. Not to my recollection. 9 Q. Did Scruggs tell you whether he 10 had a copy of the TRO? 11 A. I can't recall. 12 Q. Do you know if Scruggs ever had 13 a copy of the TRO? 14 A. I assume he had a copy. And 15 there was communication between Doheny and 16 Todd Thompson and Scruggs routinely, I 17 didn't participate in those conversations. 18 Q. So you don't know if Frank 19 Doheny ever mentioned a TRO or talked to 20 Scruggs about the TRO? 21 A. I don't know. You will have to 22 ask Mr. Doheny and Mr. Scruggs that. 23 Q. You don't know whether anybody 24 in Doheny's office talked to Scruggs about</p>
<p>Page 2554</p> <p>1 A. Between the CID and the Moore 2 deposition. 3 Q. That was on the November 28th or 4 29th? 5 A. 29th. 6 Q. Was Frank Doheny a participant 7 in any of these discussions you had with 8 Scruggs? 9 A. Not to my recollection. 10 Q. Was anybody in his office, 11 Doheny's office -- 12 A. I don't know. 13 Q. -- involved in the discussions 14 you had with Mr. Scruggs on the TRO? 15 A. I don't know if they had any 16 discussions. 17 Q. Well, your discussions with you 18 and Scruggs; was anybody else in Doheny's 19 office involved in those discussions? 20 Were they on the phone, were they 21 conferenced in? 22 A. Not to my recollection. 23 Q. Did Scruggs tell you whether he 24 was talking to them about the TRO?</p>	<p>Page 2556</p> <p>1 that? 2 A. I don't know what their 3 conversations were. 4 Q. Did you have a discussion with 5 Margolin and Scruggs about the TRO between 6 the time of its issuance and the time of 7 your testimony on November 29, 1995? 8 A. I had discussions also with 9 Margolin between the CID deposition and 10 the Moore testimony. 11 Q. On the 29th? 12 A. On the 29th. 13 Q. Okay. Sir, when was the first 14 time you realized that you were going down 15 to Mississippi to testify on the 29th in 16 the Moore case? 17 A. Sometime around the 26th or 27th 18 of November. 19 Q. And how did you come to that 20 realization? 21 A. Communication with my attorneys. 22 Q. Who? 23 A. Mr. Margolin and Mr. Scruggs. 24 Q. At that time did they tell you</p>

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<p style="text-align: right;">Page 2557</p> <p>1 that you were going to testify in the                  2 Moore case with respect to issues                  3 involving tobacco?                  4 A. No, they told me I would be                  5 testifying in a CID.                  6 Q. Did they tell you about the                  7 Moore case?                  8 A. The primary focus, I believe,                  9 was the CID.                  10 Q. Did they tell you about the                  11 Moore case?                  12 A. Not to my recollection.                  13 Q. So when is the first time you                  14 knew you were going to testify in the                  15 Moore case on November 29th, 1995?                  16 A. Probably between the CID and the                  17 testimony in the Moore case.                  18 Q. So that was -- if I understand                  19 your testimony, sir, you did not know                  20 until the conclusion of the CID, which was                  21 November 29th, 1995 in the morning, right?                  22 A. That I was going to be ordered                  23 to testify in the Moore case.                  24 Q. Let me ask the question</p>	<p style="text-align: right;">Page 2559</p> <p>1 Q. Did you know at the time you                  2 were giving testimony in the CID, that you                  3 were going to give testimony in the Moore                  4 case in the afternoon?                  5 A. No.                  6 Q. So the first time Jeffrey Wigand                  7 knew he was going to testify in the Moore                  8 case on the November 29th, 1995, was                  9 November 29th, 1995?                  10 A. Sometime between the CID and the                  11 testimony, yes.                  12 Q. And that was November 29th,                  13 1995?                  14 A. I believe so.                  15 Q. So Mr. Doheny had no idea that                  16 you were going to testify in the Moore                  17 case in November 29th, 1995?                  18 A. I don't know what Mr. Doheny                  19 knew or didn't know.                  20 Q. You didn't tell him?                  21 A. I don't believe I told him.                  22 Q. You didn't tell anybody in his                  23 office?                  24 A. I don't believe I told him.</p>
<p style="text-align: right;">Page 2558</p> <p>1 different. The testimony in the CID that                  2 we are talking about occurred in the                  3 morning of the 29th of November?                  4 A. I believe my attorneys gave                  5 notice to Brown &amp; Williamson the night                  6 before at 5:00 p.m.                  7 Q. The testimony in the Moore --                  8 in the CID was on the morning of November                  9 29th, 1995; is that right?                  10 A. That is correct.                  11 Q. And at that time, at the time                  12 you were testifying in the CID, you did                  13 not know that you were going to be                  14 testifying that afternoon in the Moore                  15 case?                  16 A. I believe there was a court                  17 order at that time generated in which                  18 Brown &amp; Williamson participated that the                  19 judge ordered me to testify.                  20 MR. SHEFFLER: I move to strike                  21 the testimony, your Honor.                  22 THE COURT: Sustained, it's not                  23 responsive. That's not what he is asking.                  24 Listen to his question, please.</p>	<p style="text-align: right;">Page 2560</p> <p>1 Q. As I understand your testimony                  2 Mr. Margolin and Mr. Scruggs advised you                  3 between the CID and the Moore afternoon                  4 testimony about the testimony in Moore?                  5 A. They advised me there was a                  6 court order from a Mississippi judge. I                  7 was in Mississippi. And I was so ordered                  8 to provide testimony.                  9 Q. But they advised you that for                  10 the first time after the CID testimony?                  11 A. I believe that's the time, yes.                  12 Q. And just to make absolutely                  13 sure, you did not know prior to that                  14 time -- you had no reason to know prior to                  15 that time that you were going to be asked                  16 to testify on November 29th in Moore?                  17 MR. ALDOCK: I don't think that                  18 was his testimony.                  19 Q. Well, I'm asking the question                  20 then. Did you know or did you have any                  21 reason to know that you were going to be                  22 asked to testify in Moore before November                  23 29, 1995?                  24 A. There was a possibility because</p>

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<p style="text-align: right;">Page 2561</p> <p>1 I was served a subpoena sometime in early 2 November, I think on or about the 14th of 3 November. 4 Q. Okay. That subpoena required 5 you to do what? 6 A. To testify in the Moore 7 litigation in Pascagoula, Mississippi. 8 Q. On what date? 9 A. I'm not quite sure. 10 THE COURT: I'm not sure we are 11 clear. Are you saying you received a 12 subpoena in the Moore case on November the 13 14th? 14 THE WITNESS: That's right. 15 THE COURT: You received that 16 here in Kentucky? 17 THE WITNESS: I received it in 18 Mississippi. There was an existing 19 subpoena before the TRO. 20 MR. SHEFFLER: Let's mark that, 21 please. 22 ----- 23 Thereupon, Wigand Exhibit 24 No. 84 was marked for</p>	<p style="text-align: right;">Page 2563</p> <p>1 A. I see that. 2 Q. Now, so then you knew from this 3 subpoena that you were required to 4 testify, according to subpoena, on 5 November 29th at 9:00 a.m. in the Moore 6 case, correct? 7 A. From this piece of paper that's 8 what this suggests. 9 Q. I'm asking, sir, did you in fact 10 receive this? 11 A. Yes, I did. 12 Q. Did you read it? 13 A. Yes. 14 Q. Did you understand it? 15 A. Yes. 16 Q. Did you know that you were going 17 to testify in the Moore case November 29th 18 pursuant to this subpoena? 19 MR. ALDOCK: Object. Go ahead. 20 THE COURT: It's all right. He 21 withdrew the objection as I understand it. 22 THE WITNESS: Did I understand 23 this piece of paper? Yes. 24 Q. Do you understand that it</p>
<p style="text-align: right;">Page 2562</p> <p>1 purposes of identification. 2 ----- 3 Q. Let me show you what we have 4 marked as Wigand Exhibit 84. Is that a 5 copy of a subpoena duces tecum for your 6 deposition? 7 A. It appears, yes. 8 Q. And it says that it was served 9 on November 16th. 10 A. Um-hum. 11 Q. Is that correct? 12 A. That's correct. 13 Q. It was served upon you? 14 A. That's correct. 15 Q. And this copy of the subpoena 16 asks and requests that you appear for 17 deposition on November 29th; does it not? 18 A. That's correct. 19 Q. And it also attaches an Exhibit 20 A to it; do you see that? 21 A. I see that, yes. 22 Q. And Exhibit A requires you to 23 bring documents responsive to certain 24 requests; do you see that?</p>	<p style="text-align: right;">Page 2564</p> <p>1 requested your appearance to testify in 2 the Moore case November 29th? 3 A. Yes. 4 Q. Did you discuss this subpoena 5 with Mr. Scruggs? 6 A. Yes. 7 Q. When is the first time you 8 discussed this subpoena with Mr. Scruggs? 9 A. I can't recall. 10 Q. How did it come that you were 11 served the subpoena in Mississippi? 12 A. I think I testified to that last 13 time. 14 Q. Okay. When you were served with 15 the subpoena in Mississippi did you see 16 Mr. Scruggs? 17 A. Mr. Scruggs was there, yes. 18 Q. Okay. And did you talk to him 19 about the subpoena? 20 A. Briefly. 21 Q. Did you talk to him about the 22 document request attached to it? 23 A. Briefly. 24 Q. And you reviewed the document</p>



<p style="text-align: right;">Page 2565</p> <p>1 request attached to it with him?</p> <p>2 A. Briefly.</p> <p>3 Q. Now, sir, did you discuss this</p> <p>4 subpoena with Frank Doheny?</p> <p>5 A. I did not discuss it with Frank</p> <p>6 Doheny, no.</p> <p>7 Q. Did you give a copy of it to</p> <p>8 Frank Doheny or anybody in his office?</p> <p>9 A. I did not do it.</p> <p>10 Q. Did you give it to anybody --</p> <p>11 did you discuss it with anybody in his</p> <p>12 office prior to November 29th, 1995?</p> <p>13 A. I don't recall discussing it</p> <p>14 specifically with Mr. Doheny or any of Mr.</p> <p>15 Doheny's colleagues.</p> <p>16 Q. Did you alert him to the</p> <p>17 issuance of the subpoena at all? Him or</p> <p>18 his colleagues.</p> <p>19 A. I am sure Mr. Scruggs notified</p> <p>20 him.</p> <p>21 Q. How are you sure of that?</p> <p>22 A. I would imagine that a competent</p> <p>23 attorney -- since Mr. Doheny was working</p> <p>24 with Mr. Scruggs, I would assume they</p>	<p style="text-align: right;">Page 2567</p> <p>1 November 29th, 1995?</p> <p>2 A. I may have discussed it in</p> <p>3 general terms with both Mr. Scruggs and</p> <p>4 Mr. Margolin.</p> <p>5 Q. When did you have the discussion</p> <p>6 with Mr. Margolin?</p> <p>7 A. From time to time between the</p> <p>8 issuance of the Mississippi subpoena and</p> <p>9 the 28th of November.</p> <p>10 Q. When did you have discussions</p> <p>11 with Mr. Scruggs about the issuance of the</p> <p>12 subpoena?</p> <p>13 A. When did I have discussion</p> <p>14 with -- I had discussion from time to time</p> <p>15 between the 14th and the 28th.</p> <p>16 Q. Okay. This was served on you on</p> <p>17 the 16th. Did you have discussions about</p> <p>18 the subpoena on the 14th?</p> <p>19 A. I'm sorry, the 16th. I wrote</p> <p>20 down the 14th when the judge gave it to</p> <p>21 me. I will change it to the 16th.</p> <p>22 Q. You had no discussions with</p> <p>23 Scruggs, Margolin or any of your lawyers</p> <p>24 prior to the issuance of the subpoena</p>
<p style="text-align: right;">Page 2566</p> <p>1 communicated.</p> <p>2 Q. Okay. So you assumed, but did</p> <p>3 you have any factual knowledge that such a</p> <p>4 communication took place?</p> <p>5 A. No, not that I know of. But I</p> <p>6 would expect that attorneys were</p> <p>7 communicating.</p> <p>8 Q. I understand. I don't want to</p> <p>9 know your expectations. I want to really</p> <p>10 know what you knew happened because of</p> <p>11 factual evidence or factual events that</p> <p>12 occurred that you witnessed or were</p> <p>13 participating in. Was there any factual</p> <p>14 reason for you to conclude that Mr. Doheny</p> <p>15 knew of this subpoena?</p> <p>16 A. I can't recall.</p> <p>17 Q. Okay. You never discussed it</p> <p>18 with him or his colleagues or the document</p> <p>19 request attached to it?</p> <p>20 A. I don't think I specifically</p> <p>21 remember discussing it with Mr. Doheny or</p> <p>22 his colleagues.</p> <p>23 Q. Okay. Did you discuss it with</p> <p>24 any of your other attorneys prior to</p>	<p style="text-align: right;">Page 2568</p> <p>1 before flying down to be served the</p> <p>2 subpoena?</p> <p>3 A. Not to my recollection.</p> <p>4 Q. Now, is it your testimony that</p> <p>5 any of these discussions that you had with</p> <p>6 Margolin or Scruggs after the issuance of</p> <p>7 the subpoena on November 16th, did any of</p> <p>8 those occur after the TRO was served upon</p> <p>9 you?</p> <p>10 A. I can't recall.</p> <p>11 Q. Well, sir, the subpoena was</p> <p>12 served on the 16th. You flew down to</p> <p>13 Mississippi and flew back. The TRO was</p> <p>14 served upon you on the 21st.</p> <p>15 A. Um-hum.</p> <p>16 Q. Did you, knowing that you had</p> <p>17 the subpoena testify in Moore, go to any</p> <p>18 of your attorneys, any of the attorneys in</p> <p>19 Doheny's office, Margolin or Scruggs, did</p> <p>20 you go to them, did you contact them in</p> <p>21 any way, to discuss the TRO and this</p> <p>22 subpoena?</p> <p>23 A. Not to my recollection specific,</p> <p>24 no.</p>

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(B&W) PROTECTED BY MINNESOTA TOBACCO LITIGATION PROTECTIVE ORDER

Brown & Williamson vs. Wigand  
VOLUME 15

Multi-Page November 13, 1996, Depo of Jeffrey Wigand

Page 2569	Page 2571
<p>1 Q You didn't discuss it at all -- 2 A In specific. 3 Q -- until after the CID on 4 November 29th. Yes or no? 5 A I can't recall specifically. 6 Q So you may have discussed it 7 with Scruggs? 8 A Um-hum. 9 Q You may have discussed the 10 issuance of the subpoena and the request 11 to testify November 29th and the TRO, 12 which was served on you on November 21st; 13 you may have discussed those two things 14 with things with Scruggs after November 15 21st? 16 A I may have, yes. 17 Q You just can't recall? 18 A I just can't recall. 19 Q Now, you -- getting back to the 20 CID You were originally given the CID 21 in -- around August 23rd of 1995; is that 22 right? 23 A I was not given the CID on 24 August the 23rd, 1995.</p>	<p>1 Q Who? 2 A Mr. Margolin. 3 Q Anyone else? 4 A Mr. Margolin, and then with Mr. 5 Scruggs. 6 Q And with Mr. Scruggs? 7 A After he was retained in 8 October. 9 Q Okay. So Mr. Scruggs was aware 10 of this civil investigative demand. Okay. 11 Did you discuss it with Mr. Doherty? 12 A I'm not sure. 13 Q Okay. Now, what I would like to 14 do, sir, is try to focus on the time 15 period after the TRO and on the civil 16 investigative demand. Pursuant to the 17 civil investigative demand, sir, did you 18 make any contacts with B &amp; W or did you 19 have your attorneys make any contacts with 20 B &amp; W? 21 A At the time the -- I believe 22 the CID was generated, I had Mr. Margolin 23 as my only attorney. 24 Q Okay. Did you have any</p>
Page 2570	Page 2572
<p>1 Q When did you receive a copy of 2 the civil investigative demand? 3 A My attorney received it. 4 Q When did he receive it? 5 A On or about that date, I'm not 6 sure. 7 Q And it was originally scheduled, 8 the CID, to take place where? 9 A I'm not sure. 10 Q Well, it's Exhibit 64. If you 11 have it there you can show it to the 12 witness, maybe refresh his recollection. 13 Do you see there, sir, that the civil 14 investigative demand was requiring you to 15 testify in the 23rd of August, 1995, in 16 Louisville; is that correct? 17 A No, it says the 29th. 18 Q On August 29th. I'm sorry, it 19 was served on the 23rd, you are right. Do 20 you see that? 21 A Um-hum. 22 Q Now, did you discuss this with 23 your attorneys? 24 A Yes.</p>	<p>1 discussions with Mr. Margolin with respect 2 to notifying Brown &amp; Williamson about the 3 issuance of the CID? 4 A I don't recall. 5 Q Do you know if Brown &amp; 6 Williamson was given any notice about the 7 issuance of the CID? 8 A Yes. 9 Q Okay. And how was that notice 10 given? 11 A That notice was given to them, I 12 believe, in Mississippi. 13 Q Okay. Prior to that was any 14 notice given to them? 15 A I don't know. 16 Q Did you request any notice be 17 given? 18 A Not that I recall. 19 Q Did you discuss the -- whether 20 or not notice should be given to Brown &amp; 21 Williamson with any of your attorneys? 22 A I don't recall. 23 Q Did you discuss whether any 24 notice should be given in August?</p>

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<p style="text-align: right;">Page 2573</p> <p>1 A I don't recall.</p> <p>2 Q Okay. Now, the CID was</p> <p>3 scheduled to commence on August 29th. Did</p> <p>4 it?</p> <p>5 A No.</p> <p>6 Q When were you told that it was</p> <p>7 not going to commence on August 29th?</p> <p>8 A I am not sure. I had</p> <p>9 conversation on and off with both John</p> <p>10 Reed and with Reggie Tom relative to this</p> <p>11 CID.</p> <p>12 Q Okay. Who canceled the CID for</p> <p>13 August 29th?</p> <p>14 A I'm not sure.</p> <p>15 Q Did you request that it be</p> <p>16 canceled?</p> <p>17 A I did not have an attorney of</p> <p>18 record, so I guess --</p> <p>19 Q You told us Margolin was your</p> <p>20 attorney.</p> <p>21 A Margolin was my attorney but he</p> <p>22 is a criminal attorney.</p> <p>23 Q I understand that. But did you</p> <p>24 have anybody request that it be adjourned?</p>	<p style="text-align: right;">Page 2575</p> <p>1 Q With you, with anyone. To your</p> <p>2 knowledge, were there any discussions</p> <p>3 about the resumption of the CID that you</p> <p>4 were to testify in?</p> <p>5 A I'm not sure there were</p> <p>6 discussions relative to when it would be</p> <p>7 rescheduled.</p> <p>8 Q Okay.</p> <p>9 A It was revolving about my</p> <p>10 ability to retain an attorney.</p> <p>11 Q Well, you had an attorney, I</p> <p>12 thought.</p> <p>13 A I had a criminal attorney that</p> <p>14 was representing me pro bono, yes.</p> <p>15 Q Did Margolin ever represent you</p> <p>16 on the contract, the contract that you</p> <p>17 entered into between Brown &amp; Williamson</p> <p>18 and yourself?</p> <p>19 A No.</p> <p>20 Q Never?</p> <p>21 A No.</p> <p>22 Q Okay. Let me ask you, sir, you</p> <p>23 have referred a couple of times now that</p> <p>24 Mr. Margolin is a criminal attorney.</p>
<p style="text-align: right;">Page 2574</p> <p>1 A Not that I can recall.</p> <p>2 Q Okay. Did you have any</p> <p>3 discussions with Margolin about the</p> <p>4 adjournment?</p> <p>5 A Probably did.</p> <p>6 Q What were those conversations</p> <p>7 about?</p> <p>8 A I can't recall.</p> <p>9 Q So it was canceled for some</p> <p>10 reason that you don't know?</p> <p>11 A No.</p> <p>12 Q Is that your testimony?</p> <p>13 A It was canceled for some reason.</p> <p>14 I can't recall at this time.</p> <p>15 Q Was there any correspondence</p> <p>16 with respect to the cancellation of the</p> <p>17 CID?</p> <p>18 A Not that I know of or do I have</p> <p>19 in my possession or had in my possession.</p> <p>20 Q Okay. Now, when it was</p> <p>21 canceled, was there any discussions about</p> <p>22 the resumption of the deposition or the</p> <p>23 CID at that time?</p> <p>24 A Discussions with whom?</p>	<p style="text-align: right;">Page 2576</p> <p>1 Yesterday you testified that Mr. Margolin</p> <p>2 was referred to you by Mr. Bergman. Do</p> <p>3 you remember that?</p> <p>4 A I don't think he said he</p> <p>5 referred. He provided me his name. I</p> <p>6 don't know whether that's a referral or</p> <p>7 not.</p> <p>8 Q He provided you with Mr.</p> <p>9 Margolin's name?</p> <p>10 A I called Mr. Margolin, as I</p> <p>11 said, and I deemed it --</p> <p>12 Q What did you retain Mr. Margolin</p> <p>13 for at that time?</p> <p>14 A At that time? To represent me</p> <p>15 relative to CBS and to help me secure</p> <p>16 counsel.</p> <p>17 Q You retained Mr. Margolin to</p> <p>18 represent you relative to CBS to do what?</p> <p>19 A My indemnification agreement.</p> <p>20 Q To negotiate an indemnification</p> <p>21 agreement?</p> <p>22 A Um-hum.</p> <p>23 Q Okay.</p> <p>24 A As well as find me a national</p>

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<p>Page 2577</p> <p>1 counsel. 2 Q. National counsel to do what? 3 A. Testify in -- I was sued by 4 Brown &amp; Williamson. 5 Q. Now, let me ask you about the 6 reissuance of the CID or the rescheduling 7 of the CID deposition. When was that 8 rescheduled, to your knowledge? When was 9 the first time you knew that there was 10 going to be a rescheduling of the CID? 11 A. Of this CID? 12 Q. Yes. 13 A. When did I first become -- I'm 14 not exactly sure. 15 Q. Well, were there any discussions 16 you had with Margolin or Reed or Reggie 17 Tom or anyone? 18 A. I believe there was some 19 correspondence in early November, and I'm 20 not exactly sure, I wasn't party to all of 21 it. 22 Q. Well, the party -- the part that 23 you were party to. 24 A. I understood that the deposition</p>	<p>Page 2579</p> <p>1 now? 2 A. Not to my recollection, no. 3 Q. Was this correspondence between 4 you and Margolin? 5 A. Correspondence, are you talking 6 about telephone conversations, are you are 7 you talking about written? 8 Q. Let's deal with written 9 correspondence. When you said 10 correspondence I presumed that meant 11 written. Were there conferences? 12 A. Most of my -- the bulk of my 13 communication with Mr. Margolin were 14 vis-a-vis the phone. 15 Q. Okay. The ones that weren't -- 16 the ones that weren't, do you have copies 17 of those? 18 A. I think they have been provided 19 if they have been not been put on a 20 privilege log. I don't know. 21 MR. SHEFFLER: Let me ask 22 counsel. Have you made an effort to get 23 Margolin's correspondence with respect to 24 this issue?</p>
<p>Page 2578</p> <p>1 was going to be rescheduled and Mr. Tom 2 was no longer going to be conducting the 3 deposition. I think he was passing the 4 baton to another U.S. Attorney by the name 5 of John Reed. And I am sorry, the other 6 attorney's name slips my mind at this 7 time. 8 Q. Did you have any discussions 9 with them about the dates of the 10 resumption of the deposition? 11 A. I just had -- no. Not 12 specifically, no. 13 Q. Well, generally. 14 A. I didn't have specific or 15 general. I had -- that it was going to be 16 rescheduled. 17 Q. Have you produced all that 18 correspondence to us in this case? 19 A. Everything that I had relative 20 to this has been produced. 21 Q. Was there any correspondence 22 that you had relative to this that was 23 somehow or another destroyed or misplaced 24 or gone between the time of the 1995 and</p>	<p>Page 2580</p> <p>1 MS. WERTHEIMER: No. 2 MR. SHEFFLER: Okay. 3 MR. ALDOCK: What document 4 production request calls for it? 5 MR. SHEFFLER: I just asked 6 whether you did or whether you didn't. We 7 will deal with that later. I'm not 8 impugning anything at this point. 9 MS. WERTHEIMER: Feel free to 10 impugn. We are not shy about the due 11 diligence we have done because Mr. 12 Margolin did not represent Dr. Wigand in 13 connection with Kentucky or in connection 14 with this litigation, in any -- didn't 15 touch on this litigation. 16 MR. SHEFFLER: It may touch on 17 the contempt litigation. 18 MS. WERTHEIMER: It may touch on 19 the contempt litigation and we may need to 20 revisit that. But we have not -- the 21 reason we did not seek Mr. Margolin's 22 files, unlike others, is because we made 23 that determination. 24 MR. SHEFFLER: That's fine.</p>

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<p style="text-align: right;">Page 2581</p> <p>1 We'll resolve that. Will deal with                  2 that --                  3 MS WERTHEIMER: As a result --                  4 we can resolve that but as a result we                  5 have not produced any correspondence.                  6 Have never seen any.                  7 BY MR. SHEFFLER:                  8 Q When did you give Mr. Margolin a                  9 copy of the TRO?                  10 A I don't think I gave Mr.                  11 Margolin a copy of the TRO.                  12 Q When did you notify him about                  13 the TRO?                  14 A I'm not sure.                  15 Q Okay. Did Mr. Margolin advise                  16 you with respect to the rescheduling of                  17 the CID and the effect of the TRO on that                  18 rescheduled CID?                  19 A Yes.                  20 Q And did he tell you that the                  21 effect of the TRO with respect to giving                  22 notice to Brown &amp; Williamson?                  23 A I believe Brown &amp; Williamson was                  24 given notice relative to both the CID and</p>	<p style="text-align: right;">Page 2583</p> <p>1 Q Do you know when the CID was                  2 scheduled for the November 28th? When was                  3 the first time that you became aware that                  4 the CID was scheduled to be on the 28th of                  5 November?                  6 MR. ALDOCK: 28th or 29th?                  7 Q 29th of November, 1995, when was                  8 the first time --                  9 A I'm not sure. Sometime very                  10 shortly before that.                  11 THE COURT: Can we establish --                  12 were you re-served with a new CID or was                  13 it a carryover, were you just informed                  14 orally to appear?                  15 THE WITNESS: I believe my                  16 attorney was served with new CID's.                  17 THE COURT: You believe?                  18 THE WITNESS: I believe, yes.                  19 THE COURT: And your attorney                  20 was who?                  21 THE WITNESS: Mr. Margolin.                  22 BY MR. SHEFFLER:                  23 Q Okay. Do you have a copy of                  24 that?</p>
<p style="text-align: right;">Page 2582</p> <p>1 the Mississippi deposition.                  2 Q I'm talking about communications                  3 Mr. Margolin may have had with you. Did                  4 Mr. Margolin communicate with you with                  5 respect to the reissuance of the CID, the                  6 rescheduling of the CID, after the TRO was                  7 served upon you?                  8 A I believe we had some                  9 conversations the morning of the CID. I                  10 can't recall other than that.                  11 Q Okay, sir. Is it your testimony                  12 here today that the only conversations you                  13 had with Mr. Margolin with respect to                  14 giving notice to Brown &amp; Williamson about                  15 the CID was on the morning of the 29th of                  16 November, 1995?                  17 A Or the evening of the 28th.                  18 Those dates are kind of cloudy right now.                  19 Q No other discussions with Mr.                  20 Margolin on that matter?                  21 A Other than I had a federal CID                  22 that I had to respond to and it was                  23 scheduled for Pascagoula, Mississippi at                  24 9:00 a.m. on the 28th -- the 29th.</p>	<p style="text-align: right;">Page 2584</p> <p>1 A I don't have a copy of it, no.                  2 THE COURT: I don't mean to take                  3 over the questioning. How did you learn                  4 to be in Mississippi on the 29th?                  5 THE WITNESS: I was told that                  6 the CID had been rescheduled.                  7 THE COURT: Told by whom?                  8 THE WITNESS: I believe Mr.                  9 Margolin, and then subsequently by Mr.                  10 Scruggs, that the CID had been                  11 rescheduled, and that I was by federal                  12 statute -- and I don't remember the exact                  13 language -- but I had to be there or I                  14 would be held in contempt.                  15 Q So you did have discussion with                  16 Mr. Margolin or Mr. Scruggs before                  17 November 28th, 1995 about the rescheduling                  18 of the CID?                  19 A General conversation, yes.                  20 Q When did this occur?                  21 A Very shortly before the 28th.                  22 Q Well, sometime between the 21st                  23 and the 28th?                  24 A Between the 26th, 27th, the</p>

<p style="text-align: right;">Page 2585</p> <p>1 28th, that short. One or two days 2 beforehand. 3 Q Did you at that time know that 4 you had a TRO? 5 A I believe so, yes. 6 Q Did you tell Mr. Margolin and 7 Mr. Scruggs at that time that you had a 8 TRO served upon you? 9 A I believe they knew I had a TRO 10 at that time. 11 THE COURT: That's not the 12 question. Did you say anything -- 13 THE WITNESS: I think it was 14 clear that I had a TRO. 15 Q Did you tell them, sir? That's 16 the question. 17 A I can't recall a specific 18 conversation on going through the TRO, no. 19 Q You can't recall discussing the 20 TRO with Mr. Scruggs or Mr. Margolin at 21 that time? 22 A I'm sure I discussed it. I'm 23 not exactly sure of the conversation. 24 Q Well, then you did discuss the</p>	<p style="text-align: right;">Page 2587</p> <p>1 Q Were you served with it in 2 Kentucky? 3 A No. 4 Q So when you flew down to 5 Mississippi, did you know you were flying 6 down for a CID deposition? 7 A I had the understanding that I 8 was flying down for a CID deposition, yes. 9 Q But you had not been served with 10 any papers to that effect? 11 A I had been told that the papers 12 had been served on my attorney. 13 Q And when were those papers 14 served on your attorney? 15 A I don't know exactly when they 16 were served on my attorney. 17 Q So which attorney was it? 18 A I believe it was Mr. Margolin. 19 Q Now, did he give you a copy of 20 those papers for the first time on the 21 28th when you were in Mississippi? 22 A I don't think he has ever given 23 me a copy, I think he just showed me a 24 copy.</p>
<p style="text-align: right;">Page 2586</p> <p>1 TRO with Mr. Scruggs or Mr. Margolin at 2 that time? 3 A I may have, yes. 4 Q Well, let me just pursue this 5 one step further. Now, from the time 6 period before you went to Mississippi and 7 after you were served with the TRO, did 8 you discuss the effect of the TRO on the 9 resumption of the CID with your attorneys, 10 Scruggs or Margolin? 11 A I may have. I don't recall 12 specifically. 13 Q Did you discuss it with any 14 other attorney? The effect of the TRO and 15 the resumption of the CID? 16 A No. 17 Q Do you recall now, sir, when you 18 may have been served with the resumption 19 notice of the CID? 20 A I believe it was the morning of 21 the 29th. 22 Q That was the first time you were 23 served with the resumption -- 24 A I'm not exactly sure.</p>	<p style="text-align: right;">Page 2588</p> <p>1 Q Did he show it to you the first 2 time on the 28th of November? 3 A I believe he showed it to me 4 when I was in Mississippi, yes. 5 Q Did Mr. Scruggs talk to you 6 about the rescheduling of the deposition 7 in the CID? 8 A I think he may have. 9 Q Okay. When did he have that 10 discussion with you? 11 A Shortly before going to 12 Mississippi. 13 Q Who was the first to notify you 14 about the rescheduling of the deposition, 15 Margolin or Scruggs? 16 A I can't discern the two of them. 17 Q You can't discern the two? 18 A No, I can't discern who told me 19 first. I think it was Mr. Margolin, but 20 I'm not sure. 21 Q Okay. 22 MR. SHEFFLER: Let's mark this 23 as the next exhibit. 24 -----</p>

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<p style="text-align: right;">Page 2589</p> <p>1 Thereupon, Wigand Exhibit 2 No. 85 was marked for 3 purposes of identification. 4 ----- 5 BY MR. SHEFFLER. 6 Q This is a letter dated November 7 22nd, 1995. Do you see that, sir? 8 A Um-hum. 9 Q It's to Scruggs and it's from 10 John Reed, do you see that? 11 A Um-hum. 12 Q Have you ever seen a copy of 13 this letter before? 14 A Have I ever seen a copy? I 15 think I have seen it when I was in 16 Mississippi, yes. 17 Q The first time you saw it was on 18 November 28th, 1995? 19 A Roughly about that time, yes. 20 Q Roughly is not -- 21 A Approximately. I don't know 22 exactly when I have seen it. 23 Q Did you see it before you went 24 to Mississippi on November 28th?</p>	<p style="text-align: right;">Page 2591</p> <p>1 You were in Kentucky when you had the 2 discussion about the -- 3 A I was in Kentucky. 4 Q The first time you had the 5 discussion with Mr. Scruggs about the 6 resumption of the CID you were in 7 Kentucky; were you not? 8 A I believe so. 9 Q You believe so? 10 A I believe so, yeah. 11 Q Well -- 12 A Was I living in Kentucky or was 13 I physically in Kentucky? 14 Q Were you physically in Kentucky 15 on the phone with Mr. Scruggs? 16 A I believe I could be, yes. 17 Q Well, sir, that suggests that it 18 may not be. Do you recall packing your 19 bags to go to Mississippi? Do you recall 20 that in November of 1995? 21 A Which time? 22 Q On the 28th -- on the 27th or 23 28th; do you recall that? 24 A I can recall leaving on the</p>
<p style="text-align: right;">Page 2590</p> <p>1 A I'm not sure I saw it before I 2 went to Mississippi, no. 3 Q You could have but you are not 4 sure? 5 A I'm not sure. But I don't 6 think -- this was addressed to Mr. 7 Scruggs, not to me. 8 Q Okay. Did Mr. Scruggs -- now 9 that you see it was addressed to Mr. 10 Scruggs on November 22, did Mr. Scruggs 11 talk to you about the reissuance of a CID 12 or the date for the resumption of your CID 13 testimony? 14 A He may have. 15 Q Around November 22nd? 16 A I'm not sure it was around 17 November 22nd at all. I'm sure it was 18 closer to November 29th. 19 Q But it was -- this discussion 20 you had was with you in Kentucky; was it 21 not? 22 A I'm sorry? 23 Q This discussion that you had 24 with Mr. Scruggs was with you in Kentucky.</p>	<p style="text-align: right;">Page 2592</p> <p>1 evening of the 28th, yes. 2 Q 27th. 3 MS. WERTHEIMER: No. 4 MR. ALDOCK: I don't think so. 5 Q You left on the evening of the 6 28th? 7 A I believe so, yeah, around 2:30, 8 3:00 o'clock in the afternoon. 9 Q All right. In any event, sir, 10 do you recall, when you packed your bags 11 to leave on the 28th, whether you knew you 12 were going to be testifying in 13 Mississippi? 14 A What does that mean testifying 15 in Mississippi? Relative to what the 16 action? 17 Q Relative to any action. 18 A There was a distinct possibility 19 I would be testifying, yes. 20 Q Did you know at that time what 21 case there was a distinct possibility that 22 you would testify in? 23 A There was a possibility, I 24 believe, clearly of the CID, and there is</p>

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<p>Page 2593</p> <p>1 also a possibility of the Moore case. 2 Q So at the time you left Kentucky 3 you knew that there was a possibility, a 4 distinct possibility that you would be 5 testifying in two actions; is that 6 correct? 7 A I didn't say distinct. I said a 8 possibility. 9 Q A possibility, okay. Did you 10 have any discussions with Scruggs between 11 the 16th of November and the 28th of 12 November with respect to rescheduling the 13 Moore deposition you were served with? 14 A Not that I recall. 15 Q Did you have any reason to think 16 that you were not going down to testify in 17 the Moore case? 18 A The principal reason I was going 19 down was to testify in the CID 20 Q Okay. So was there more than a 21 possibility that you would testify in the 22 CID when you left Kentucky on the 28th of 23 November? 24 A I think it was clear when I went</p>	<p>Page 2595</p> <p>1 MR. ALDOCK: I think it would be 2 relevant. 3 Q If that's responsive then go 4 ahead, sir. 5 A I was ordered by a Mississippi 6 judge to testify, simple and 7 straightforward, in which Brown &amp; 8 Williamson appeared. The judge overruled 9 Brown &amp; Williamson's objections. And when 10 I was in Mississippi I was ordered by a 11 court judge in Mississippi to go and 12 testify in the Moore case and if I didn't 13 he would hold me in contempt. Simple and 14 straightforward. 15 Q Is that responsive to my 16 question, how is it that he thought it was 17 only a possibility that he would testify 18 in Moore in the morning of the 28th? 19 MR. ALDOCK: Sure it is, because 20 what he is saying is that he knew Brown &amp; 21 Williamson was going to contest it in 22 court and he didn't know who was going to 23 win. 24 Q You knew Brown &amp; Williamson was</p>
<p>Page 2594</p> <p>1 down that I was going to testify in the 2 CID. 3 Q That was clear. And there was a 4 possibility that you would testify in the 5 Moore as well; is that correct, in your 6 mind? 7 A Possibility. 8 Q Now, sir, why was it only a 9 possibility when you had a paper served on 10 you dated November 16th that required you 11 to give testimony in Moore on November 12 29th? 13 A I think there was some things 14 that happened on those days. One, first 15 of all, I think Brown &amp; Williamson was 16 notified that day. 17 Q No, sir, no, no. I'm talking 18 about your testimony that it was a 19 possibility. 20 MR. ALDOCK: He is trying to 21 answer that question by saying what it is 22 that influenced him. He gets to these 23 things -- 24 MR. SHEFFLER Okay.</p>	<p>Page 2596</p> <p>1 going to contest this action in court, 2 sir? 3 A It thought there was a 4 possibility. 5 Q Why did you think it was a 6 possibility that Brown &amp; Williamson would 7 contest it in court? 8 A They contest everything. 9 Q Did you give notice of this 10 action to Brown &amp; Williamson? 11 A Yes. 12 Q Did you give notice of this 13 action to Brown &amp; Williamson before you 14 left Kentucky for Mississippi? 15 A Before I left, no. I gave 16 notice -- 17 Q Did you tell Mr. Doheny, who is 18 your attorney at that time, on the morning 19 of the 28th that you were going to fly to 20 Mississippi for a deposition? 21 A No. 22 Q Did you know that Mr. Doheny, 23 who was representing in this action up 24 here in Kentucky, that you were going to</p>



<p>Page 2597</p> <p>1 appear on the 29th of November to 2 cooperate with Brown &amp; Williamson? 3 A. I don't know what Mr. Doheny was 4 committing when I wasn't here. 5 Q. Appear in Louisville? 6 A. He didn't communicate that to 7 me. 8 Q. Was there any reason for Mr. 9 Doheny to believe that you were not going 10 to appear in Kentucky to cooperate with 11 Brown &amp; Williamson on November 29th, 1995? 12 A. I don't know what Mr. Doheny was 13 thinking. 14 Q. Did you know that there was an 15 order by Judge Knopf that Brown &amp; 16 Williamson had gotten to have you appear 17 on November 29th in Louisville, Kentucky? 18 A. No, I wasn't aware of it. 19 Q. No one made you aware of that 20 order? 21 A. No. 22 Q. Mr. Doheny did not make you 23 aware of that order? 24 A. Not to my recollection.</p>	<p>Page 2599</p> <p>1 judge -- in which Brown &amp; Williamson was 2 represented in court, I believe it was 3 either the 27th or the 28th, I'm not sure 4 of the date -- that the judge ordered 5 me -- and I believe Brown &amp; Williamson had 6 an opportunity during that hearing to 7 object -- and which the judge said he will 8 testify, he is in Mississippi, he is so 9 ordered to testify. 10 Q. Okay, sir. Let me ask you a 11 question. When did you learn that that 12 occurrence -- the one you just relayed, 13 this court appearance where you were 14 ordered to testify -- when did you learn 15 that happened? 16 A. Sometime between the CID and the 17 initiation of the Moore deposition. 18 Q. So I'm not talking about that 19 day. I'm not talking about the 29th now. 20 I'm talking about when you were still in 21 Kentucky, and you were preparing to leave 22 to go to Mississippi. Okay? 23 A. Um-hum. 24 Q. Why did you think there was a</p>
<p>Page 2598</p> <p>1 Q. Wait a minute, sir. 2 A. I don't remember it. No. 3 Q. Did Mr. Doheny communicate to 4 you that Judge Knopf's instruction that 5 the parties, including Jeffrey Wigand, 6 meet and confer on November 29th? 7 A. No. 8 THE COURT: Once again, your 9 question of Frank Doheny includes anyone 10 in the office? 11 MR. SHEFFLER: Yes. 12 Q. Did anyone in Mr. Doheny's 13 office tell you that you were instructed 14 by the court in this case, Judge Knopf, to 15 meet and confer with Brown &amp; Williamson? 16 A. No. 17 Q. Sir, were you going down on 18 November 28th, to testify in the Moore 19 case because you believed you would be 20 held in contempt in the Moore case if you 21 did not do so? 22 A. I didn't know whether I was 23 going to be held in contempt or not in the 24 Moore case. I had no idea until the</p>	<p>Page 2600</p> <p>1 possibility that you would testify in 2 Moore, and only a possibility? You had a 3 subpoena served upon you. 4 A. My primary intention of going to 5 Mississippi was in response of the CID. 6 Q. But, sir, you had a subpoena 7 served upon you to testify on the 29th. 8 Did you not know that you were going to 9 testify on the 29th in Moore at that time? 10 A. I didn't know for sure, no. 11 Q. Well, why was it that you were 12 in doubt? 13 A. Because -- why? Because I 14 wasn't ordered to specifically. 15 Q. Because you weren't ordered to? 16 A. It was a voluntary testimony. I 17 was ordered by a Mississippi judge when I 18 was in Mississippi to testify. He ordered 19 me. Simple and straightforward. 20 Q. So before you were told that you 21 were ordered by a Mississippi judge to 22 testify, you thought that you had no 23 obligation to go to Mississippi to 24 testify?</p>

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<p style="text-align: right;">Page 2601</p> <p>1 A I had an obligation to go to the 2 CID, and that's where -- 3 Q No obligation to testify in 4 Moore; is that your understanding? 5 A I wasn't ordered to testify in 6 Moore. I could have elected not to 7 testify in Moore. 8 Q Who talked to you about your 9 obligation to testify in the Moore case 10 prior to leaving for Mississippi on the 11 28th? 12 A Nobody. 13 Q Did you discuss this CID -- 14 excuse me. Did you discuss the subpoena 15 with Scruggs? Did you discuss the 16 subpoena in Moore with Scruggs? 17 A In general terms, yes. 18 Q Did you discuss the subpoena 19 with Scruggs with respect to your 20 obligations? 21 A Which obligations? 22 Q To testify. 23 A Briefly, yes. 24 Q Did you tell Scruggs that you</p>	<p style="text-align: right;">Page 2603</p> <p>1 your Honor, and it's a tension for us in 2 terms of, and that's exactly how he words 3 it. I think we will let him answer that 4 one. We will see where it goes. 5 THE COURT: All right. 6 MR. ALDOCK: The tension, of 7 course, your Honor, is clear to all of us. 8 We are all playing with it. If we end up 9 using, which we have not decided, an 10 advice of counsel defense, if they move 11 renewal of the contempt. 12 If they do that we have to 13 decide what our defenses are. We haven't 14 decided. If we decide to use an advice of 15 counsel defense, then they are entitled to 16 some leeway, as your Honor has ruled, with 17 regard to that. And so each question 18 raises this tension and we are all 19 struggling with it, I think all of us 20 collectively. 21 Even though whatever decision 22 they have made on the contempt we haven't 23 made a decision on the defense. 24 BY MR. SHEFFLER:</p>
<p style="text-align: right;">Page 2602</p> <p>1 didn't want to testify in Moore? 2 A I said I had a reluctance given 3 the TRO in Kentucky, yes. 4 Q What did Scruggs say? 5 A He said -- 6 THE COURT: Wait a minute. 7 Whoa -- 8 Q What did Scruggs say with 9 respect to the TRO and your testimony in 10 Moore? 11 THE COURT: Any objection? I 12 don't mind. Again, the question is 13 about -- 14 MR. ALDOCK: Let's see exactly 15 how it was worded. 16 THE COURT: Now, we are getting 17 into actual advice. That goes beyond what 18 I ruled a while ago. 19 MR. SHEFFLER: If there is an 20 objection, your Honor, I would like to 21 respond. 22 THE COURT: I don't want to make 23 objections where none appear. 24 MR. ALDOCK: I appreciate it,</p>	<p style="text-align: right;">Page 2604</p> <p>1 Q Answer the question. 2 A Answer the question again? I 3 mean this has all transpired. 4 Q Did you have a discussion with 5 Scruggs about your obligations to appear 6 and testify in Moore in respect to the TRO 7 that had been issued on the 21st? 8 A Any conversations? At any time? 9 Q Well, you said you were 10 reluctant to testify. 11 A Yes, I had a conversation. 12 Q You were reluctant. Did you 13 talk to Scruggs about your reluctance? 14 A Yes, I had some concern. 15 Q Okay. Did Scruggs advise you 16 with respect to the TRO and its effect on 17 the subpoena in Moore? 18 They are going to let you 19 answer it. If they don't object that 20 means you answer. You can answer the 21 question, sir, unless they object. 22 (Laughter) 23 MR. ALDOCK: When you say that I 24 have got to go back and read it.</p>

<p style="text-align: right;">Page 2605</p> <p>1 MR. SHEFFLER: Well, he keeps 2 looking at you like he is waiting for you 3 to help him out here. 4 THE COURT: Are you thinking 5 through your answer? 6 THE WITNESS: I was thinking 7 through my answer. I'm not sure it's an 8 appropriate question. 9 MR. SHEFFLER: Okay. It's 10 appropriate enough to get in the line we 11 are talking here. 12 THE COURT: Well, you can't 13 make up the objection. 14 THE WITNESS: I realize that. 15 Q. So answer it, please. 16 MS. WERTHEIMER: We are not 17 interposing an objection to the question. 18 A. Yes, Scruggs provided me advice. 19 Q. Okay, sir. Was it that advice 20 that led you to believe that there was 21 only a possibility that you would testify? 22 A. The advice was -- the advice 23 that Mr. Scruggs gave me was that I had a 24 Mississippi judge order, and that when I</p>	<p style="text-align: right;">Page 2607</p> <p>1 too. 2 Q. Now, is it your testimony that 3 you did not have a reluctance and did not 4 express a reluctance to Mr. Scruggs to 5 testify in Moore because of the TRO prior 6 to November 29th; is that your testimony, 7 sir? 8 A. I expressed the reluctance once 9 I was in Mississippi. 10 Q. But you had no reluctance to go 11 to Mississippi to testify in the Moore 12 case prior to -- 13 MR. ALDOCK: That's not what he 14 said. The pointing of the finger is 15 inappropriate. 16 MR. SHEFFLER: I'm asking the 17 question because we have had -- the record 18 is unclear at this point. He has 19 testified he had a conversation about the 20 TRO where he expressed reluctance to 21 Scruggs prior to November 28th. 22 MR. ALDOCK: It's unclear 23 because of his answers and because you 24 keep asking the questions in different</p>
<p style="text-align: right;">Page 2606</p> <p>1 was in Mississippi I had to respond to 2 that order or I would be held in contempt 3 in Mississippi. 4 Q. We are talking -- so this 5 advice came to you prior to you leaving 6 for Mississippi? 7 A. No, that advice claim to me -- 8 Q. Dr. Wigand, I'm sorry. I am 9 talking to you about the time period 10 before November 29th. The time period 11 when you were in Kentucky. You told us 12 you had a discussion with Scruggs about 13 the subpoena and the TRO and therefore 14 believed you told him that you had a 15 reluctance to testify? 16 A. I think what I am saying is I 17 had that reluctance between the time I was 18 in Mississippi. I didn't say anything 19 before that. And I believe Mr. Scruggs 20 advised me. Something wrong with your 21 neck? 22 Q. Yes, sir. I'm getting a pain in 23 the neck. 24 A. I have one too, a lot lower,</p>	<p style="text-align: right;">Page 2608</p> <p>1 ways, both. 2 Q. Mr. Wigand, let me see if I 3 can -- I'm unclear and I misunderstand 4 what's going on. So I'm going to try to 5 start over and see if I can understand. 6 You got a subpoena to testify in 7 Moore on the 16th. To your knowledge that 8 subpoena was never revoked, was it? 9 A. To my knowledge it was never 10 revoked. 11 Q. To your knowledge, that -- you 12 were requested to be in Mississippi on the 13 29th for Moore? 14 A. I was also informed I was to be 15 in Mississippi on the 29th for a civil 16 investigative demand issued by the 17 Department of Justice, yes. 18 Q. But the only service of process 19 upon you for attendance in Mississippi on 20 the 29th was the Moore case. Are we clear 21 on that? 22 A. Um-hum. 23 Q. Now, sir -- 24 MR. ALDOCK: That's not true.</p>

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<p style="text-align: right;">Page 2609</p> <p>1 When you serve someone's attorney you have 2 served them.</p> <p>3 MR. MILLIMAN: We haven't seen 4 the service on the attorney. We have 5 never seen the service on the attorney.</p> <p>6 MR. SHEFFLER: When he says he 7 had it --</p> <p>8 MR. MILLIMAN: You have seen a 9 letter that he agreed -- you produced the 10 document.</p> <p>11 MR. ALDOCK: No.</p> <p>12 MR. SHEFFLER: Wait a minute. 13 He says he never saw that letter. He says 14 he never saw a subpoena to Scruggs.</p> <p>15 MR. ALDOCK: I'm saying was he 16 served? His attorney was served.</p> <p>17 MR. SHEFFLER: To his knowledge. 18 It's to his knowledge. He said Margolin 19 had discussions with the CID. He said he 20 never saw the service of any process. To 21 his knowledge, there was no process served 22 until -- except for this. That's what we 23 are investigating.</p> <p>24 MS. WERTHEIMER: You marked it</p>	<p style="text-align: right;">Page 2611</p> <p>1 MS. WERTHEIMER: There was 2 never another notice that looked like 3 this.</p> <p>4 MR. ALDOCK: He only got one 5 formal demand and then they extended by 6 informal means.</p> <p>7 MR. SHEFFLER: That's fine. 8 But what I am asking him about is the only 9 service on him that he knew about at the 10 time he was packing his bags to go to 11 Mississippi was Moore.</p> <p>12 A. No, I think I have testified 13 contrary to that. I said I went primarily 14 to testify on a CID demand.</p> <p>15 Q. Primarily but you also had -- 16 Okay. Let's start again.</p> <p>17 A. My reason for going to 18 Mississippi at that time was --</p> <p>19 Q. Time out. There is no question 20 pending. Let me ask the question, and we 21 will go question and answer and probably 22 get still confused and but we will try our 23 best.</p> <p>24 You did get the service of a</p>
<p style="text-align: right;">Page 2610</p> <p>1 as an exhibit. Let me back up.</p> <p>2 MR. SHEFFLER: To the 29th of 3 November.</p> <p>4 MS. WERTHEIMER: No, I was going 5 to go back even earlier. I think in 6 Exhibit 24 -- I'm sorry, pardon me. 7 Exhibit 64, the last time we met, you 8 showed him the CID for the 29th of August.</p> <p>9 Now, that -- no question he was 10 served with this. He has testified he 11 wasn't served with this letter.</p> <p>12 MR. ALDOCK: Your question was, 13 was he served. Now that's --</p> <p>14 MR. SHEFFLER: To appear on the 15 29th. That service was for the 29th of 16 August. I'm talking about the 29th of 17 November in Mississippi.</p> <p>18 MS. WERTHEIMER: But there was 19 never -- there was never another 20 subpoena.</p> <p>21 MR. ALDOCK: It was extended.</p> <p>22 MR. SHEFFLER: I understand what 23 you are saying. There was never another 24 notice.</p>	<p style="text-align: right;">Page 2612</p> <p>1 subpoena duces tecum for Moore on November 2 16th to appear in Mississippi on November 3 29th; right?</p> <p>4 A. I have already answered that.</p> <p>5 Q. And you did have discussions --</p> <p>6 MS. WERTHEIMER: You need to 7 answer his questions yes, no, or -- yes or 8 no with an explanation. You can't just 9 refer him back.</p> <p>10 MR. SHEFFLER: Thank you, 11 counsel.</p> <p>12 Q. You did -- you did have 13 discussions with Scruggs about the TRO 14 after the issuance of the TRO?</p> <p>15 A. Limited discussions, yes.</p> <p>16 Q. And those discussions did take 17 place when you were in Kentucky over the 18 phone, before November 28th, 1995?</p> <p>19 A. I believe so, yes.</p> <p>20 Q. You are not sure what dates they 21 were but they did occur; right?</p> <p>22 A. I believe so, yes.</p> <p>23 Q. And those discussions did 24 address -- in addition to the effect of</p>

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<p style="text-align: right;">Page 2613</p> <p>1 the TRO on the CID, they did address the 2 effect of the TRO on the subpoena that was 3 issued in Moore? 4 A. I believe so. 5 Q. And those discussions were with 6 Scruggs; correct? 7 A. Um-hum. 8 Q. And those discussions were with 9 Margolin; correct? 10 A. Yes. 11 Q. And you said that you expressed 12 to Scruggs some reluctance to go and 13 testify in Moore on the 29th of November 14 because of the TRO; did you not? 15 A. When I was already in 16 Mississippi. 17 Q. Did you ever express to him a 18 reluctance to go and testify about the TRO 19 before then? 20 A. Not that I can recall. 21 Q. Why not? 22 A. I just didn't. I didn't have -- 23 Q. You didn't have any reluctance 24 before the 29th of November?</p>	<p style="text-align: right;">Page 2615</p> <p>1 he thought it was a probability, but he 2 wasn't sure it was going to happen. 3 MR. SHEFFLER: He told me that 4 he thought it was a possibility. 5 MR. ALDOCK: Yes. 6 MR. SHEFFLER: Because there was 7 a TRO and because Brown &amp; Williamson may 8 act on the TRO. 9 MR. ALDOCK: No, the possibility 10 that he was testifying in Mississippi is 11 what I am referring to. 12 MR. SHEFFLER: That there was a 13 possibility -- we are trying to discover 14 why it is. He told me this never was 15 revoked. He told me he didn't discuss the 16 subpoena and the TRO with Scruggs. Why is 17 it -- that's what we are trying to 18 discover. 19 Why is it that he thought this 20 was only a possibility? 21 Q. When you get served with a 22 subpoena, sir, and you are served and it 23 says appear on November 29th and you are 24 flying down on November 28th to the place</p>
<p style="text-align: right;">Page 2614</p> <p>1 A. I didn't have any concern. 2 Q. You didn't have any concern 3 about a temporary restraining order that 4 restrained you from testifying without 5 giving notice to Brown &amp; Williamson before 6 leaving for Mississippi to testify against 7 Brown &amp; Williamson? Yes or no? 8 A. There was a lot of questions. 9 Which one would you like me to answer 10 first? 11 Q. The ones I asked. 12 A. It was a very compound question. 13 Ask me simple questions. Did I know 14 before I left? 15 Q. Did you have reluctance about 16 testifying in the Moore case that you were 17 subpoenaed on because of the TRO prior to 18 leaving for Mississippi? 19 MR. ALDOCK: Objection; because 20 you assume -- and the witness is having 21 trouble because you assume he is going to 22 be testifying in Moore and he has already 23 had a whole colloquy for a long time with 24 you about he thought it was a possibility.</p>	<p style="text-align: right;">Page 2616</p> <p>1 where the subpoena tells you to be for 2 November 29th to give testimony, why is it 3 you thought it was only a possibility you 4 would give testimony? 5 A. Because I had the ultimate 6 decision whether I was going to testify or 7 not. 8 Q. The ultimate decision rests with 9 Jeffrey Wigand whether you were testifying 10 or not? 11 A. Then on the advice of counsel 12 and a court order of Mississippi, I went 13 ahead with the deposition, yes. 14 Q. So at the time -- 15 THE COURT: I think the 16 question is, why did you think you had to 17 respond to the CID but not to the subpoena 18 in the Moore case that was served on you 19 on November the 16th? 20 THE WITNESS: I was advised by 21 my attorneys that I had a federal 22 subpoena, or a federal CID demand, and 23 that I had to respond to that or there was 24 consequences.</p>

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<p>Page 2617</p> <p>1 THE COURT: And no discussion 2 about the November 16th subpoena in the 3 Moore? 4 THE WITNESS: No. 5 BY MR. SHEFFLER: 6 Q If I understand correctly, sir, 7 your attorneys are -- the attorneys we are 8 talking about, Margolin and Scruggs, are 9 the same attorneys who negotiated on your 10 behalf the resumption of the CID in 11 Mississippi on the 29th? 12 A I assume they did. 13 Q I get this straight, I think the 14 picture is coming clearer. You were 15 served on the 16th, the TRO comes on the 16 21st. Then you have some discussions with 17 your attorneys and you learn through your 18 attorneys that they are rescheduling a CID 19 to take place by happenstance on the 20 morning of the 29th, right? 21 A Yes, that's so far correct at 22 the convenience of the government. 23 Q And when you get there they tell 24 you in the afternoon, Mr. Wigand, you have</p>	<p>Page 2619</p> <p>1 A I knew I was going down to 2 Mississippi, yes. 3 Q And you knew that -- because you 4 were talking to Mr. Scruggs and Mr. 5 Margolin you knew that they were going to 6 court over this matter, did you not? 7 A Over which matter? 8 Q Over the deposition notice in 9 the Moore case. 10 A I was aware that they were 11 giving notice to Brown &amp; Williamson. 12 Brown &amp; Williamson elected not to take 13 notice. 14 MS. WERTHEIMER: Did you -- 15 that's different. 16 THE WITNESS: Yeah, I may have 17 been aware that they were going to court 18 on it while I was there. 19 Q You were aware before you left 20 that they were going to court on it? 21 A No, I was not. 22 Q And you had discussions with Mr. 23 Scruggs about this subpoena duces tecum 24 after the TRO, did you not, and before you</p>
<p>Page 2618</p> <p>1 got to testify in Moore, too, right? 2 A Yes. 3 MS. WERTHEIMER: Is that your 4 testimony? 5 Q Is that your testimony? 6 A Yes. I'm ordered to. 7 Q It just so happens that you were 8 there on the same very day for the CID 9 that you were noticed to be there for the 10 Moore case? 11 A That seems to be true. 12 Q And all the time that you were 13 preparing to go to Mississippi, and during 14 all these discussions with Scruggs that 15 you had from the 21st on, it was your 16 understanding, sir, that the deposition 17 notice was never withdrawn for Moore; is 18 that correct? 19 A I think so; that's true, yes. 20 Q And you knew you were going down 21 to Mississippi for Moore; did you not? 22 A Not specifically, no. 23 Q You knew you were going down to 24 Mississippi on the 29th?</p>	<p>Page 2620</p> <p>1 left for Mississippi; did you not? 2 A In general. 3 Q In general. But you did have 4 discussions -- 5 A I had specific conversations 6 with Mr. Scruggs on it or Mr. Margolin 7 before I left. 8 Q Well, I don't know what you mean 9 by specific and general. You had general 10 conversations but not specific 11 conversations, and I'm not sure what you 12 mean. 13 A I didn't get into the details of 14 what the TRO was. I didn't get into the 15 details of what was going on, no. 16 Q Did you ever ask your attorney, 17 Scruggs, what the effect of the TRO was on 18 the deposition notice prior to being in 19 Mississippi? 20 A I asked him after I was in 21 Mississippi. 22 Q You never asked him before that? 23 A No. 24 Q You never asked any attorney</p>

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(B&W) PROTECTED BY MINNESOTA TOBACCO LITIGATION PROTECTIVE ORDER

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Multi-Page November 13, 1996, Depo of Jeffrey Wigand

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<p>1 about the effect of the TRO on this 2 subpoena that you had served upon you in 3 the Moore case? 4 THE COURT: Prior to going to 5 Mississippi. 6 Q. Prior to going to Mississippi. 7 A. In general conversations, yes. 8 THE WITNESS: I didn't go into 9 the specifics, your Honor. 10 Q. General conversations with whom? 11 A. Scruggs and Margolin. 12 Q. Those are told only two. 13 A. That I remember, yes. 14 Q. What general conversations -- 15 what were the scope of these general 16 conversations? 17 A. That I was being ordered by 18 federal subpoena to be in Mississippi. 19 Q. No, no, no. I'm not talking 20 about the CID. I'm talking about Moore. 21 What were the general conversations of the 22 TRO and the Moore deposition subpoena that 23 you had before leaving for Mississippi? 24 A. There may or may not be an</p>	<p>1 A. Privileged. 2 MR. SHEFFLER: No, that's not, 3 I submit it's not privileged. He doesn't 4 represent him in the state of Mississippi 5 action. He supposedly, Scruggs has got up 6 and said -- 7 MR. ALDOCK: I will represent 8 for the record that he knows because there 9 was a retainer agreement and waivers that 10 were made. 11 Q. All right. You also know that 12 Mr. Scruggs was -- on the process 13 server's, return of service signature it's 14 Dicky Scruggs, do you see that? 15 MS. WERTHEIMER: That's Exhibit 16 63. 17 Q. On the Exhibit, the subpoena 18 duces tecum for deposition in Moore. 19 Scruggs signed the return of process, did 20 he not -- return of service. 21 A. I will assume that you are 22 correct. 23 THE COURT: You are talking 24 about the November 16th --</p>
Page 2622	Page 2624
<p>1 issue. 2 Q. That was a discussion with 3 Scruggs? 4 A. Yes. 5 Q. Which one told you there may or 6 may not be an issue; Scruggs or Margolin 7 or both? 8 A. Both. 9 Q. Okay. Just for the record, at 10 the time of these discussions -- after 11 November 21st, 1995, you knew that Scruggs 12 was representing the state of Mississippi; 13 did you not? 14 A. I knew on October 30th that Mr. 15 Scruggs was representing the state of 16 Mississippi. I believe your letter 17 that -- I'm sorry. 18 MS. WERTHEIMER: That's enough. 19 Q. On October 30, 1995, you knew 20 that Scruggs was representing the state of 21 Mississippi? 22 A. Um-hum. 23 Q. How did you come to that 24 knowledge?</p>	<p>1 MR. SHEFFLER: Yes, the 2 deposition notice of November 16. 3 THE COURT: Exhibit 84. 4 Q. At this time Mr. Scruggs was 5 your attorney in this action; correct? 6 A. Where is -- Mr. Scruggs's name 7 is where on this? 8 Q. Return of service. Do you see 9 that over process server. Do you see 10 that? 11 A. Okay. 12 Q. And you were also aware that Mr. 13 Scruggs was negotiating during this time 14 the resumption of the CID? 15 A. I believe Mr. Margolin was 16 principally charged with that. 17 Q. Principally charged with 18 Margolin, but Scruggs was assisting 19 Margolin in this -- in this? 20 A. I don't know that. 21 Q. You don't know that? 22 A. I don't know that for specific, 23 no. 24 Q. Do you know it generally?</p>

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<p>Page 2625</p> <p>1 A. I believe as my attorney he was                  2 probably involved in it.                  3 Q Did you have any discussions                  4 with him during the time about it, about                  5 the CID resumption? With Scruggs?                  6 A I may have. I don't recall                  7 specifically.                  8 Q You don't recall specifically?                  9 A No.                  10 Q But in other words, they may                  11 have happened, they may not have?                  12 A I generally remember some                  13 discussion. I can't remember the specific                  14 conversation.                  15 Q During this time you were also                  16 testifying that Scruggs represented you in                  17 this action, too, in this action being                  18 Brown &amp; Williamson versus Jeffrey Wigand?                  19 A No, Mr. Scruggs is my personal                  20 attorney.                  21 Q Sir, yesterday you testified                  22 that Mr. Scruggs represented you in this                  23 action as of October 30th, 1995.                  24 A He was my personal attorney is</p>	<p>Page 2627</p> <p>1 MR. ALDOCK: He has a clear                  2 understanding from a retainer agreement                  3 that's absolutely clear that he                  4 represented him with the issues related to                  5 this matter. Counsel of record problem he                  6 has got --                  7 THE COURT: Without going into                  8 it any further, the letter of October 30                  9 from Mr. Scruggs to Dr. Wigand PA103 does,                  10 as I set out earlier I think clearly on                  11 the record, does go into potential                  12 defenses to Dr. Wigand if sued by Brown &amp;                  13 Williamson. And it discusses, without                  14 going into it any further too far a                  15 potential lawsuit by Dr. Wigand against                  16 Brown &amp; Williamson.                  17 MR. SHEFFLER: I'm not                  18 challenging Scruggs's letter.                  19 MR. ALDOCK: This case wasn't                  20 filed yet, Bruce. That's the problem --                  21 that's one of the problems.                  22 THE COURT: I viewed it as                  23 seeking legal advice by a potential                  24 lawsuit by Brown &amp; Williamson against</p>
<p>Page 2626</p> <p>1 what I said yesterday.                  2 Q When did he begin representing                  3 you in this action?                  4 A I don't think he has ever                  5 represented me in this action.                  6 MR. ALDOCK: The witness is now                  7 -- we are now between his counsel of                  8 record and whether he was counseling him                  9 on the issues.                  10 MR. SHEFFLER: No, I'm talking                  11 to him about counsel --                  12 MR. ALDOCK: He was counsel in                  13 connection with issues that were arising                  14 in Kentucky, but he wasn't counsel of                  15 record. We established that.                  16 MR. SHEFFLER: Excuse me,                  17 counsel, As you know, to have an                  18 attorney-client relationship with respect                  19 to a case or issue there has to be an                  20 expectation on both sides that there is                  21 such a relationship, and it is                  22 confidential. And if he doesn't have an                  23 understanding he is representing him in                  24 this case --</p>	<p>Page 2628</p> <p>1 Dr. Wigand.                  2 MR. SHEFFLER: That's right.                  3 As of October 30th it wasn't filed.                  4 THE COURT: It wasn't filed, but                  5 I don't know of any requirement of law                  6 that a suit be filed. You seek legal                  7 advice usually before --                  8 MR. SHEFFLER: Absolutely, your                  9 Honor, I have no problem with any of that.                  10 My problem is with Mr. Wigand's                  11 representations today that Scruggs wasn't                  12 representing him in this suit.                  13 THE COURT: Well, he is saying                  14 attorney of record.                  15 MR. ALDOCK: In the suit he                  16 wasn't.                  17 THE COURT: The suit wasn't                  18 pending, and he never was the attorney of                  19 record.                  20 MR. ALDOCK: On these issues he                  21 was.                  22 MR. SHEFFLER: I just want to                  23 make clear --                  24 THE COURT: There is lots of</p>

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<p>Page 2629</p> <p>1 occasions where a person goes to a lawyer. 2 Maybe the client -- the person who is 3 facing criminal charge goes to the family 4 lawyer, and the lawyer says, well, we had 5 better get you a criminal lawyer and gets 6 another attorney. Theoretically a person 7 has two lawyers in that instance. 8 MR. SHEFFLER: That's right, 9 your Honor, I want to make sure that I 10 understand that Mr. Wigand was requesting 11 attorney advice from his attorney with 12 respect to these issues. 13 THE COURT: And I have answered 14 that. I read it in-camera. 15 MR. SHEFFLER: I want to make 16 sure that he understands it, in case there 17 is ever any doubt in this case, about 18 whether the advice given to him by Mr. 19 Scruggs was given to him in his role or 20 guise as an attorney on the issues of the 21 TRO and the testimony. 22 Q. My question really is -- because 23 I don't want to have him interpose a 24 defense --</p>	<p>Page 2631</p> <p>1 BY MR. SHEFFLER: 2 Q. Mr. Wigand, how many times have 3 you flown on Mr. Scruggs's airplane? 4 A. How many times have I flown on 5 Mr. Scruggs's airplane? I have never 6 really sat down and counted them. 7 Q. Do so now, you are sitting. 8 A. Are you talking specifically 9 Mr. Scruggs's airplane? His personal 10 airplane? Is that what the question is? 11 MS. WERTHEIMER: As opposed to 12 being flown -- 13 Q. His plane means his airplane. 14 Does he have more than one airplane? 15 A. He has access to more than one 16 airplane, yes. 17 Q. How many times have you flown on 18 his airplanes or the ones he has access 19 to? 20 A. That's a different question. 21 THE COURT: You are excluding 22 commercial flights? 23 MR. SHEFFLER: Excluding 24 commercial flights, yeah.</p>
<p>Page 2630</p> <p>1 MR. SHEFFLER: Are we running 2 out of time? 3 THE VIDEOGRAPHER: We have about 4 a minute and a half. 5 Q. Just so the record is clear, 6 Mr. Scruggs was representing you with 7 respect to the issues that were to be 8 involved in this case. He was 9 representing you in anticipation of this 10 case when he was giving you advice about 11 the TRO and about its effect on the CID or 12 the Moore depositions. Is that your 13 understanding? 14 A. Yes. 15 Q. Okay. 16 THE COURT: Let's stop there and 17 change tape. 18 THE VIDEOGRAPHER: Going off the 19 record. The time is approximately 11:15. 20 (Recess taken.) 21 THE COURT: Are we ready? 22 MR. SHEFFLER: Yes. 23 THE VIDEOGRAPHER: Back on the 24 record, the time is approximately 11:28.</p>	<p>Page 2632</p> <p>1 THE WITNESS: I'm going to say 2 four times, maybe five maximum. 3 Q. Okay. Tell me about the four or 4 maybe five times. Where were they and 5 when were they? 6 A. The first time I believe was 7 sometime around the 14th of November, 8 1995. 9 THE COURT: From where to where? 10 THE WITNESS: From Louisville 11 to actually Jackson, Mississippi, and 12 back. I believe the second time was 13 November 28ish, and back on the back on 14 the 29th. 15 THE COURT: From Louisville to 16 where? 17 THE WITNESS: Louisville to 18 Pascagoula this time. I believe I also 19 went be down to Mississippi one other time 20 to Pascagoula to meet with Mr. Scruggs 21 relative to litigation. 22 And I believe Mr. Scruggs 23 afforded me the opportunity to ride on his 24 plane, and my children, back from the</p>

<p style="text-align: right;">Page 2633</p> <p>1 ethical culture award. I think that's 2 all -- and that's on April 22nd, 1996. 3 MR. ALDOCK: That was from where 4 to where? 5 THE WITNESS: That was from New 6 York City back to Louisville. I think 7 that's all. 8 BY MR. SHEFFLER: 9 Q. When was the time that he flew 10 you down to meet with him about matters 11 relative to litigation? 12 A. I can't recall the dates. 13 Q. Was it after the Moore 14 deposition? 15 A. Yes. 16 Q. Was it before the 4-22-96 17 flight? 18 A. I'm not sure, I can't recall 19 specifically. I can recall going down 20 with my daughters. 21 Q. You went down to Pascagoula with 22 your daughters? 23 A. That's what I said. 24 Q. No, you said you went with your</p>	<p style="text-align: right;">Page 2635</p> <p>1 Q. Did you discuss documents 2 relative to Brown &amp; Williamson? 3 A. No. 4 Q. Was there any mention of 5 documents relative to Brown &amp; Williamson? 6 A. No. 7 Q. Did you discuss any information, 8 confidential information or information 9 that Brown &amp; Williamson considered 10 confidential? 11 MR. ALDOCK: We are answering 12 these questions on the contempt issue on 13 the assumption that they are called for 14 and there is no waiver. So we are -- he 15 is doing that. 16 Other than that, I would have to 17 start objecting a lot more frequently. 18 But I've given you leeway under that 19 assumption that we have had the ground 20 rules for this -- 21 THE COURT: I'm permitting the 22 invasion of privacy. 23 MR. ALDOCK: And to establish 24 the client relationship, that's all.</p>
<p style="text-align: right;">Page 2634</p> <p>1 daughters from New York City to 2 Louisville. 3 A. That was one time. You didn't 4 listen carefully. Can we read it back? 5 MR. ALDOCK: Just answer his 6 question. 7 Q. You went down to Pascagoula with 8 your daughters? 9 A. Yes. 10 Q. Did you stay overnight? 11 A. Over the weekend, yes. 12 Q. What was the litigation that you 13 met with Mr. Scruggs about? 14 A. I think that's privileged 15 conversation. He was my attorney. 16 Q. What was the litigation that you 17 met with Mr. Scruggs about? 18 A. My personal litigation. 19 Q. Was it this suit? 20 A. It revolves around this suit. 21 That's all I want to tell you. 22 Q. Did it revolve around Brown &amp; 23 Williamson? 24 A. Yes.</p>	<p style="text-align: right;">Page 2636</p> <p>1 THE COURT: Only to the extent 2 of the contempt, or defense to the 3 contempt motion but no further. 4 MS. WERTHEIMER: One moment, 5 your Honor. 6 (Discussion held off the 7 record.) 8 THE COURT: Did I say privacy? 9 I meant to say privilege. 10 THE WITNESS: Same thing, 11 hopefully. 12 THE COURT: Change that word to 13 privilege, if you would. 14 MR. ALDOCK: I think we have 15 gone as far as we can go without trenching 16 beyond contempt. Therefore, I think I 17 will instruct him not to answer the 18 pending question, which strikes me as 19 going further. 20 THE COURT: I will sustain the 21 objection. 22 BY MR. SHEFFLER: 23 Q. Okay. Sir, did you meet with 24 Mr. Scruggs when he flew you down to</p>

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(B&W) PROTECTED BY MINNESOTA TOBACCO LITIGATION PROTECTIVE ORDER

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<p>1 Pascagoula --</p> <p>2 A. I'm sorry.</p> <p>3 Q. Did you meet with Mr. Scruggs</p> <p>4 when you flew you down to Pascagoula with</p> <p>5 respect to any litigation other than your</p> <p>6 personal litigation with him that he was</p> <p>7 representing you in?</p> <p>8 A. No.</p> <p>9 Q. There was no other litigation?</p> <p>10 A. No.</p> <p>11 Q. Okay.</p> <p>12 A. Potential litigation versus</p> <p>13 personal litigation. That's as far as I</p> <p>14 will go.</p> <p>15 Q. Okay. Now, do you know that the</p> <p>16 CID -- strike that.</p> <p>17 The original CID was to take</p> <p>18 place in Louisville as you know.</p> <p>19 A. What were we talking about.</p> <p>20 Q. The original CID in August, 1995</p> <p>21 was to take place in Louisville.</p> <p>22 A. That's what the CID says, the</p> <p>23 notice.</p> <p>24 Q. And when it was changed to take</p>	<p>1 deposition in Louisville?</p> <p>2 A. No. It was at the convenience</p> <p>3 of the government.</p> <p>4 Q. Who told you that it was at the</p> <p>5 convenience of the government?</p> <p>6 A. That's my understanding.</p> <p>7 Q. Did you know --</p> <p>8 THE COURT: Your understanding</p> <p>9 from what?</p> <p>10 THE WITNESS: Just general</p> <p>11 facts and what transpired. It was at the</p> <p>12 convenience of the government that the</p> <p>13 deposition take place in Pascagoula in</p> <p>14 Mississippi.</p> <p>15 THE COURT: You are still not</p> <p>16 understanding. An understanding comes</p> <p>17 from something, where did it come from?</p> <p>18 THE WITNESS: I think the</p> <p>19 meeting with Mr. Reed and whoever the</p> <p>20 other attorney was, Mr. Margolin, Mr.</p> <p>21 Scruggs. I just can't give you a</p> <p>22 specific -- it was my understanding it was</p> <p>23 rescheduled in Pascagoula at the</p> <p>24 convenience of the government.</p>
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<p>1 place in Mississippi, did you discuss with</p> <p>2 your lawyers why it was changed to take</p> <p>3 place in Mississippi?</p> <p>4 A. It was at the convenience of the</p> <p>5 government, I believe.</p> <p>6 Q. Is that what you were told?</p> <p>7 A. I believe that's what I</p> <p>8 understood.</p> <p>9 Q. Was that what you were told?</p> <p>10 A. That's what I understood.</p> <p>11 Q. Sir, my question is, were you</p> <p>12 told that?</p> <p>13 A. I can't recall. That was my</p> <p>14 understanding.</p> <p>15 Q. Well, were you told that the CID</p> <p>16 could be scheduled in Kentucky?</p> <p>17 A. I didn't ask that question.</p> <p>18 Q. Why not?</p> <p>19 A. Didn't need to.</p> <p>20 Q. Why?</p> <p>21 A. It was at the convenience of the</p> <p>22 government.</p> <p>23 Q. Did you discuss with your</p> <p>24 attorneys whether you could have the</p>	<p>1 BY MR. SHEFFLER:</p> <p>2 Q. The meeting with Mr. Reed took</p> <p>3 place when?</p> <p>4 A. In Mississippi.</p> <p>5 Q. Took place when?</p> <p>6 A. On the morning of the 29th.</p> <p>7 Q. Okay. Prior to the meeting with</p> <p>8 Mr. Reed in Mississippi, on the morning of</p> <p>9 the 29th, did you have any discussions</p> <p>10 that would lead you to your understanding</p> <p>11 that the deposition of the CID was</p> <p>12 rescheduled for Mississippi at the</p> <p>13 convenience of the government?</p> <p>14 A. I think I already answered that,</p> <p>15 haven't I?</p> <p>16 Q. No.</p> <p>17 THE COURT: I don't believe so.</p> <p>18 THE WITNESS: I was not</p> <p>19 involved in the decision to pick</p> <p>20 Pascagoula, Mississippi. It was done</p> <p>21 between my attorneys and I believe the</p> <p>22 Department of Justice.</p> <p>23 BY MR. SHEFFLER:</p> <p>24 Q. I understand that. But I'm</p>

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<p>Page 2641</p> <p>1 asking you, did you ask your attorneys or 2 anyone whether the deposition could be 3 held in Louisville? 4 A. Not to my recollection. 5 Q. Why not? 6 A. I just didn't. 7 Q. But, sir, you had to take off 8 school to go down to this; did you not? 9 A. I took one day off of school, 10 that's correct. 11 Q. Did you take two days off? 12 A. I took one day. 13 Q. Well, sir, could you not have 14 asked them to schedule the deposition in 15 Louisville? 16 A. Sure, I could have asked them 17 lots of things but I didn't. 18 Q. Why not? 19 A. I didn't feel it necessary. 20 Q. Did you want to go to 21 Mississippi? 22 A. No, it didn't really matter to 23 me. 24 Q. Would you rather have had the</p>	<p>Page 2643</p> <p>1 A. Go ahead repeat it. 2 Q. Did you have any discussions 3 with your attorneys about your rights to 4 have the deposition scheduled in 5 Louisville? 6 A. I think that's a privileged 7 conversation. 8 Q. I'm not sure that it is. 9 MS. WERTHEIMER: You can answer 10 the question. 11 THE WITNESS: Not that I can 12 recall. I didn't think my attorneys 13 determine where the venue is. I think the 14 U.S. Government determines where the venue 15 is. 16 BY MR. SHEFFLER: 17 Q. Did you have any discussions 18 with your attorneys about that? 19 A. No. 20 Q. What was your understanding that 21 the government determined where the 22 deposition would be and not your 23 attorneys? 24 A. I don't have anything to tell</p>
<p>Page 2642</p> <p>1 deposition take place in Louisville? 2 A. No. 3 Q. Would you have rather had the 4 deposition take place in Mississippi? 5 A. I would much rather have had it 6 take place in San Diego. I don't know, it 7 was at the convenience of the government, 8 it was scheduled in Mississippi. You have 9 to ask the government why they decided to 10 do it in Mississippi. 11 Q. I am asking you, sir, what you 12 did, if anything, to have the deposition 13 scheduled someplace other than Pascagoula, 14 Mississippi? 15 A. Nothing. 16 Q. Did you have any discussions 17 with your attorneys as to whether you had 18 the right -- 19 A. No. 20 Q. -- to request the deposition be 21 scheduled in Louisville? 22 A. Not that I recall. 23 Q. You have to let me finish the 24 question. Did you hear the question?</p>	<p>Page 2644</p> <p>1 you what the understanding of the 2 government had. You will have to ask 3 them. 4 Q. I didn't ask you about this -- I 5 asked your understanding. 6 A. I have no understanding about 7 that other than it occurred in 8 Mississippi. 9 Q. You have no understanding as to 10 whether or not you had any right in 11 determining the location of the CID? 12 A. I didn't think I had a right. 13 I'm not sure. I never investigated it. 14 Q. You never asked anyone about it? 15 A. No. 16 Q. You never asked Frank Doheny, 17 for example, about it? 18 A. No. 19 Q. Did you talk to Frank Doheny 20 about the CID at any time? 21 A. I can't recall but I may have. 22 I'm not sure. 23 Q. Okay. 24 A. I'm sure my attorneys discussed</p>

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<p>Page 2645</p> <p>1 it with him. I'm not sure of the exact 2 conversations between my attorneys and Mr. 3 Doheny. 4 Q. Did -- the meeting with Mr. 5 Reed, did that take place before the CID? 6 A. Did the meeting with Mr. Reed 7 occur before the CID? I don't know what 8 that means. 9 Q. Well, which part do you not 10 understand? 11 A. Did I meet with Mr. Reed before 12 the CID? What does that specifically 13 mean? 14 Q. It means, sir, did you meet with 15 Mr. Reed before the CID? 16 A. Yes. 17 Q. Okay. When? 18 A. Two minutes before the 19 initiation of it. 20 Q. Okay. And what occurred at that 21 meeting? 22 A. I'm John Reed, pleased to meet 23 you. 24 Q. Okay. Anything else?</p>	<p>Page 2647</p> <p>1 present and another attorney from the U.S. 2 Government was there and I cannot remember 3 his name. 4 Q. Was there any discussion 5 about -- at that time other than hello I'm 6 Mr. Reed and we are going to take a 7 deposition? 8 A. No. 9 Q. Okay. 10 A. I was there. I was responding 11 to a federal request. 12 Q. I understand. You had no 13 discussions other than that by telephone, 14 by writing letters, or anything else with 15 respect to the scheduling of the 16 deposition in Mississippi? 17 A. No. 18 Q. When I say the "deposition", I 19 mean the CID. 20 A. Yes, that's what I assume you 21 mean this time. 22 Q. Okay. Now, sir, in the subpoena 23 that was served on you that we have marked 24 as Exhibit 84, there was attached thereto</p>
<p>Page 2646</p> <p>1 A. And he informed me of the 2 purpose he was here and the CID began. 3 And he also introduced another -- 4 Q. So when you testified earlier 5 that your understanding that the CID was 6 scheduled at the convenience of Mr. Reed, 7 was that based upon your meeting with Mr. 8 Reed or not? 9 A. I didn't say that. 10 Q. Well, the record will speak for 11 itself. 12 A. I did not say -- 13 Q. Did you have any discussions 14 with Mr. Reed or anyone from the 15 government or the attorneys representing 16 the government prior to the CID 17 deposition? 18 A. Shortly before the initiation of 19 the CID. 20 Q. And that was -- 21 A. In Pascagoula, Mississippi. 22 Q. Okay. Was that with Mr. Reed 23 alone? 24 A. I believe my attorneys were</p>	<p>Page 2648</p> <p>1 a request for documents. 2 A. Um-hum. 3 Q. Who was your attorney at the 4 time that you got this request for 5 documents again? 6 A. Well, it's dated after -- 7 Q. It's dated -- it's November 8 16, 1995. 9 A. Are you finished? I was going 10 to respond to you. I said if it's dated 11 after October 30th my attorney was Mr. 12 Scruggs, as well as Mr. Margolin. 13 Q. Okay. Was Mr. Scruggs your 14 attorney with respect to responding to the 15 subpoena duces tecum for deposition served 16 on you on November 16th, 1995? 17 A. No. 18 Q. Who, if anyone, was your 19 attorney with respect to responding to 20 this subpoena? 21 A. I was unrepresented. 22 Q. Okay. Did you understand that 23 you were requested to bring certain 24 documents to the deposition?</p>

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<p style="text-align: right;">Page 2649</p> <p>1 A. Yes.</p> <p>2 Q. Did you bring certain documents</p> <p>3 to the deposition of Moore?</p> <p>4 A. No.</p> <p>5 Q. Why not?</p> <p>6 A. I didn't have any documents to</p> <p>7 bring.</p> <p>8 Q. You had no documents to bring</p> <p>9 that were responsive to this subpoena.</p> <p>10 A. I think I may have already</p> <p>11 provided to Mr. Scruggs in early November</p> <p>12 my files on -- that I had.</p> <p>13 Q. Okay. So you provided your</p> <p>14 files to Mr. Scruggs -- yesterday --</p> <p>15 just bear with me for a minute, Mr.</p> <p>16 Wigand.</p> <p>17 Yesterday you testified that you</p> <p>18 gave your files to Mr. Scruggs in December</p> <p>19 of 1995.</p> <p>20 A. I think I may have said November</p> <p>21 or December.</p> <p>22 Q. Okay. Now --</p> <p>23 MS. WERTHEIMER: I think he</p> <p>24 testified it was after the Moore</p>	<p style="text-align: right;">Page 2651</p> <p>1 Q. You didn't look at it?</p> <p>2 A. I looked at it. You asked me</p> <p>3 did I go over it personally. Yes, I went</p> <p>4 over it personally.</p> <p>5 Q. So the answer is yes did go over</p> <p>6 it?</p> <p>7 A. I went over it, yes.</p> <p>8 Q. And you did read the document</p> <p>9 request, correct?</p> <p>10 A. Yes.</p> <p>11 Q. And you did understand that you</p> <p>12 were supposed to bring documents</p> <p>13 evidencing or concerning the following to</p> <p>14 the deposition of Moore, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And did you do that, sir?</p> <p>17 A. No.</p> <p>18 Q. Did you have any reason not to</p> <p>19 do that?</p> <p>20 A. I just didn't bring any</p> <p>21 documents.</p> <p>22 Q. Why?</p> <p>23 A. I don't know why.</p> <p>24 Q. Sir, did you have any</p>
<p style="text-align: right;">Page 2650</p> <p>1 deposition. Would that be a fair</p> <p>2 characterization?</p> <p>3 MR. SHEFFLER: That's right.</p> <p>4 That was my understanding since the Moore</p> <p>5 deposition was November 29th, I presumed</p> <p>6 it was either --</p> <p>7 MS. WERTHEIMER: I understand.</p> <p>8 Q. Let me see if we can clarify</p> <p>9 this. Did you give the files -- now that</p> <p>10 you have seen the subpoena and your</p> <p>11 recollection is refreshed, did you give</p> <p>12 your files to Mr. Scruggs actually before</p> <p>13 the Moore deposition?</p> <p>14 A. I believe it was after the</p> <p>15 deposition.</p> <p>16 Q. So you didn't give your files to</p> <p>17 Mr. Scruggs before the Moore deposition?</p> <p>18 A. No, I did not.</p> <p>19 Q. You are sure of that?</p> <p>20 A. I'm positive of that, yes.</p> <p>21 Q. So did you go over this document</p> <p>22 request when you were served with the</p> <p>23 subpoena?</p> <p>24 A. No, not at all.</p>	<p style="text-align: right;">Page 2652</p> <p>1 discussions with anyone about the document</p> <p>2 request?</p> <p>3 A. No, I did not.</p> <p>4 Q. You talked to no attorney about</p> <p>5 the document request?</p> <p>6 A. Not to my recollection, no.</p> <p>7 Q. You understand that this</p> <p>8 document request was served on you to</p> <p>9 produce responsive documents at the</p> <p>10 deposition. You understood that?</p> <p>11 A. Um-hum.</p> <p>12 Q. And did you make any attempts to</p> <p>13 find documents that were responsive to</p> <p>14 this request?</p> <p>15 A. No, I didn't.</p> <p>16 Q. Why?</p> <p>17 A. I just didn't.</p> <p>18 Q. But, sir -- okay.</p> <p>19 A. I just didn't.</p> <p>20 Q. All right. Fine. Your</p> <p>21 testimony is you willfully disregarded the</p> <p>22 request to produce documents?</p> <p>23 A. Those are your words, not mine.</p> <p>24 Q. Was there anything -- any reason</p>

<p style="text-align: right;">Page 2653</p> <p>1 why you didn't do so?</p> <p>2 A. I can't recall but I did not --</p> <p>3 Q. Was there anything that you</p> <p>4 didn't understand about the request?</p> <p>5 A. I just didn't produce any</p> <p>6 documents.</p> <p>7 Q. Was there anything you didn't</p> <p>8 understand about the request?</p> <p>9 A. No.</p> <p>10 Q. So was there anything other than</p> <p>11 willful disobedience to explain why you</p> <p>12 didn't produce the documents?</p> <p>13 A. I didn't produce the documents.</p> <p>14 I don't know that it's considered willful</p> <p>15 disobedience, I just didn't produce the</p> <p>16 documents.</p> <p>17 THE COURT: And you still had in</p> <p>18 your possession at this time the documents</p> <p>19 that were in box number three from Brown &amp;</p> <p>20 Williamson?</p> <p>21 THE WITNESS: Yes.</p> <p>22 THE COURT: Where is the</p> <p>23 original of 84?</p> <p>24 MS WERTHEIMER: I'm sorry.</p>	<p style="text-align: right;">Page 2655</p> <p>1 Q. You hadn't started dictating the</p> <p>2 audiotapes yet?</p> <p>3 A. No, I hadn't.</p> <p>4 Q. You had the computer at this</p> <p>5 time? The computer diary?</p> <p>6 MS. WERTHEIMER: No, that's not</p> <p>7 the testimony.</p> <p>8 Q. Well, I'm asking, I don't know.</p> <p>9 Every time I ask we get different answers</p> <p>10 so I'm not sure which one you want to look</p> <p>11 at. So I'm going to ask it each time?</p> <p>12 A. Pick one on the record.</p> <p>13 THE COURT: Was that still on</p> <p>14 the computer?</p> <p>15 THE WITNESS: I'm not sure at</p> <p>16 the time.</p> <p>17 Q. You are not sure?</p> <p>18 A. No.</p> <p>19 Q. This is November 29, 1995. Did</p> <p>20 you look at the time of this request to</p> <p>21 see if you had any diaries?</p> <p>22 A. Yes, I had my personal diaries,</p> <p>23 yes.</p> <p>24 Q. Did you look to see whether you</p>
<p style="text-align: right;">Page 2654</p> <p>1 THE COURT: Okay. You keep it</p> <p>2 but get it back in the stack if you will.</p> <p>3 MS. WERTHEIMER: I will switch</p> <p>4 it now.</p> <p>5 BY MR. SHEFFLER:</p> <p>6 Q. Do you number 11 on the document</p> <p>7 request?</p> <p>8 A. Yes.</p> <p>9 Q. Would you read, please?</p> <p>10 A. Personal diaries or journals</p> <p>11 concerning your experience at B &amp; W.</p> <p>12 Q. At the time you received this</p> <p>13 request, November 16, 1995, had the</p> <p>14 diaries, diaries plural, been stolen from</p> <p>15 you?</p> <p>16 A. No.</p> <p>17 Q. So you at that time you had at</p> <p>18 least two red diaries; correct?</p> <p>19 A. Um-hum.</p> <p>20 Q. You had a videotape; correct?</p> <p>21 A. Um-hum.</p> <p>22 Q. Did you have the audiotapes at</p> <p>23 this time?</p> <p>24 A. No.</p>	<p style="text-align: right;">Page 2656</p> <p>1 had a videotape?</p> <p>2 A. That was not requested in this.</p> <p>3 Q. Okay. So your interpretation of</p> <p>4 number 11 was it did not call for your</p> <p>5 videotape where you read your diaries on a</p> <p>6 videotape; that wasn't called for when it</p> <p>7 said personal diaries?</p> <p>8 A. No, I didn't interpret it at</p> <p>9 that.</p> <p>10 Q. Now, the personal diaries --</p> <p>11 just so I understand what you thought</p> <p>12 requested. The personal diaries or</p> <p>13 journals concerning your experiences at</p> <p>14 B &amp; W, did that in your mind cover your</p> <p>15 personal diaries, your red personal</p> <p>16 diaries?</p> <p>17 A. It said personal diaries or</p> <p>18 journals; it didn't say videotape.</p> <p>19 Q. Okay. Fine. Did that cover</p> <p>20 your red personal diaries?</p> <p>21 A. Yes.</p> <p>22 Q. And your videotape as you</p> <p>23 testified yesterday was an example of you</p> <p>24 sitting down and reading before a video</p>

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<p>Page 2657</p> <p>1 camera portions of your personal diaries; 2 correct? 3 A. Part of reading from my diaries 4 but also annotating and giving some 5 interpretation to certain events, yes. 6 Q. But that wasn't in your mind 7 responsive to number 11? 8 A. I don't think so it was. 9 Q. So we have the two personal 10 diaries that were responsive to number 11? 11 A. Um-hum. 12 Q. And the computer diary we don't 13 know whether you had or not at the time; 14 right? 15 A. I think it was still existing at 16 that time. I didn't look at it. I think 17 the computer crash was in May of 1995. 18 Q. Okay. Now, sir, after looking 19 at number 11 and knowing that you did 20 have -- at least your personal diaries 21 were directly responsive to this request. 22 Can you think of any reason why you did 23 not produce them as required under this 24 deposition notice?</p>	<p>Page 2659</p> <p>1 A. No. 2 Q. At the time this was served on 3 November 16th until the time -- 4 A. No, I was never asked to produce 5 documents. 6 Q. Let me see, from the time this 7 was served on November 16th until the 8 deposition ended on November 29th you were 9 never asked for those documents? 10 A. No. 11 MS. WERTHEIMER: They are nice 12 guys. 13 Q. Let me show you, sir -- if we go 14 off the record for a minute, your Honor, 15 we have to go back to this sealed 16 deposition. 17 THE VIDEOGRAPHER: Going off the 18 record, the time is approximately 11:48. 19 THE COURT: Under seal. 20 ----- 21 (At this point, the testimony 22 resumes in the Confidential and Sealed 23 volume of the transcript.) 24 -----</p>
<p>Page 2658</p> <p>1 A. Well, the deposition is not 2 finished yet. I can produce them still, 3 couldn't I? 4 Q. No, sir, you are required to 5 produce them at the deposition which is 6 scheduled on the 29th. 7 A. I didn't bring them. I didn't 8 bring any documents with me when I went 9 down there. 10 Q. Did you discuss this with Mr. 11 Scruggs? 12 A. Discuss what with Mr. Scruggs? 13 Q. The fact that you had documents 14 that were responsive and didn't bring to 15 the deposition. 16 A. I'm not sure. 17 Q. You are not sure? 18 A. No. That we discussed it. I 19 was never asked for the documents when I 20 was there. 21 Q. Never? 22 A. While I was at the deposition? 23 No. 24 Q. Before?</p>	<p>Page 2674</p> <p>1 THE VIDEOGRAPHER: We are back 2 on the record. 3 BY MR. SHEFFLER: 4 Q. You did bring three letters to 5 this deposition, is that correct? 6 A. Did I bring three letters to 7 this deposition? 8 Q. Yes. 9 A. Which deposition are we talking 10 about now? To this deposition means what? 11 Q. Moore. 12 A. Moore. Did I bring three 13 letters? I'm not sure what I brought. I 14 would have to refresh my memory. What 15 three letters did I bring? 16 Q. Did you bring two letters that 17 were -- let me just show you. Maybe we 18 should have done this under seal. Let's 19 briefly go off the record again, your 20 Honor. 21 THE COURT: All right. 22 THE VIDEOGRAPHER: Going off the 23 video. 24 -----</p>

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<p>1 -----</p> <p>2 (At this point, the testimony</p> <p>3 resumes in the Confidential and Sealed</p> <p>4 volume of the transcript.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 A. Created.</p> <p>2 Q. And you claim that you</p> <p>3 understood that you were supposed to</p> <p>4 produce those diaries, along with other</p> <p>5 responsive documents, on November 29th in</p> <p>6 Moore?</p> <p>7 A. Um-hum.</p> <p>8 Q. You claim that, right? And you</p> <p>9 also know that there was a demand made</p> <p>10 upon you during the Moore deposition for</p> <p>11 those diaries; isn't that true?</p> <p>12 A. That has been just brought to my</p> <p>13 attention just this minute.</p> <p>14 Q. But you sat there when Mr.</p> <p>15 Bezanson asked you to produce the</p> <p>16 documents; did you not?</p> <p>17 A. I sat there, yes, but I don't</p> <p>18 recall it until today.</p> <p>19 Q. You heard him say it?</p> <p>20 A. Until I saw it again today I did</p> <p>21 not recall it.</p> <p>22 Q. Now, you recall it did happen,</p> <p>23 didn't it?</p> <p>24 A. Yes.</p>
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<p>1 THE VIDEOGRAPHER: Back on the</p> <p>2 record.</p> <p>3 BY MR. SHEFFLER.</p> <p>4 Q. Let me see if I got it all</p> <p>5 straight. You were requested to produce</p> <p>6 diaries pursuant to a subpoena served on</p> <p>7 you by Dicky Scruggs with return service</p> <p>8 to Dicky Scruggs on November 16th. You</p> <p>9 were requested to produce personal diaries</p> <p>10 related to your employment at B &amp; W;</p> <p>11 correct?</p> <p>12 A. That's what the document says,</p> <p>13 yes.</p> <p>14 Q. And you understood that to mean</p> <p>15 your red volume diaries that you claim</p> <p>16 were produced -- or you claim were created</p> <p>17 during the time you were at B &amp; W; is that</p> <p>18 right?</p> <p>19 A. No. I have testified those are</p> <p>20 documents -- those diaries were produced</p> <p>21 contemporaneously during my employment at</p> <p>22 B &amp; W.</p> <p>23 Q. Were created contemporaneously.</p> <p>24 Not produced but created?</p>	<p>1 Q. You have no quibble with that?</p> <p>2 A. It happened.</p> <p>3 Q. You were there, he asked you for</p> <p>4 it; right?</p> <p>5 A. Yes.</p> <p>6 Q. And it's your testimony that you</p> <p>7 never responded with the diaries to Mr.</p> <p>8 Scruggs, response to the subpoena, or to</p> <p>9 Mr. Bezanson's demand for them. You</p> <p>10 didn't respond with the diaries; did you?</p> <p>11 A. To whom?</p> <p>12 Q. To anyone.</p> <p>13 A. When I went down to the</p> <p>14 Mississippi I wasn't sure the deposition</p> <p>15 in the Moore case was going to go forward.</p> <p>16 Q. Can you answer my question?</p> <p>17 A. So I didn't bring any documents</p> <p>18 with me.</p> <p>19 Q. Can you answer my question?</p> <p>20 A. I have not responded, no. I</p> <p>21 have responded --</p> <p>22 Q. Isn't it true that the reason</p> <p>23 you didn't respond to the subpoena, to the</p> <p>24 request, to the demand at the deposition,</p>

<p style="text-align: right;">Page 2688</p> <p>1 the reason you didn't respond is because 2 it didn't exist? 3 A. That's a flagrant lie, Mr. 4 Sheffler. 5 Q. Isn't it true that they didn't 6 exist at that time? 7 A. No, no and no. 8 Q. Had you created them by that 9 time? 10 A. They were created during my 11 tenure at Brown &amp; Williamson. 12 Q. Why didn't you produce them 13 then? 14 A. I just didn't bring any 15 documents at the time. 16 Q. Were you not served with a 17 document request in December -- 18 MR. ALDOCK: Your Honor, we have 19 covered this one several times. 20 MR. SHEFFLER: December. No, 21 I'm going to ask it again. I didn't ask 22 him about this. 23 MR. ALDOCK: Why do you get to 24 ask it again?</p>	<p style="text-align: right;">Page 2690</p> <p>1 demand in December? 2 A. It's been produced since 3 December, I'm sorry. 4 MS. WERTHEIMER: The document 5 demand in the Kentucky litigation? 6 Q. In the Kentucky litigation. 7 A. It has been produced. 8 Q. No. The original diaries you 9 claim were destroyed. You claim they were 10 destroyed sometime between January and 11 March. Why didn't you respond with the 12 original diaries in December? 13 THE COURT: He is asking you 14 now, even if you didn't think the depo 15 would go in the Moore case, once you got 16 there, the question was asked -- they have 17 read from the record where they made the 18 demand on you again. Why did you not 19 furnish it then after, following the 20 deposition? 21 MR. ALDOCK: I object, your 22 Honor, because counsel knows that there 23 was order of the Federal Court that 24 stopped the discovery in this matter up to</p>
<p style="text-align: right;">Page 2689</p> <p>1 THE COURT: It hasn't been 2 answered. 3 MR. ALDOCK: He didn't produce 4 it. He says he didn't produce it. 5 THE COURT: I know. That's not 6 an answer. He says, why didn't you 7 produce it. He says, I didn't produce it. 8 That's not an answer. 9 MR. ALDOCK: The question 10 pending was did you produce it. 11 THE COURT: If I heard it right, 12 why didn't you produce it. He says I 13 didn't produce it. Really, he doesn't say 14 he didn't produce it. He says, I didn't 15 take any documents with me. That is not 16 an answer as to why didn't you do it. The 17 question on the table is why didn't you 18 produce it. 19 THE WITNESS: I have no logical 20 reason other than I wasn't sure the Moore 21 deposition was going forward. 22 BY MR. SHEFFLER: 23 Q. Why didn't you produce the 24 document in response to the document</p>	<p style="text-align: right;">Page 2691</p> <p>1 that time. 2 MR. SHEFFLER: Not in December. 3 Not in December. 4 MR. ALDOCK: December 17th. 5 MR. SHEFFLER: He had -- he 6 testified in Moore on the 29th. He left 7 Moore on the 29th, was back in Kentucky. 8 He could have responded to the deposition 9 demand. He was obligated to. 10 And the stay of discovery in 11 this case didn't affect anything about his 12 obligations to produce pursuant to a 13 demand that was made on him prior to Moore 14 and continued at the Moore deposition. 15 MR. ALDOCK: That's not our 16 interpretation of it. 17 THE COURT: When was the federal 18 order? December the 19th did you say? 19 MR. ALDOCK: The 17th, I 20 believe. 21 THE COURT: The 17th. The 22 question is why did you not furnish it 23 between November the 29th and December the 24 17th? "They" being the diaries.</p>

<p style="text-align: right;">Page 2692</p> <p>1 MS. WERTHEIMER: Pardon me. But 2 Mr. Bezanson's request is not only for 3 diaries. 4 MR. SHEFFLER: That's right. 5 He requested all the documents. 6 MS. WERTHEIMER: He requested 7 all the documents. All the documents -- 8 MR. SHEFFLER: That are 9 responsive. 10 THE COURT: I think what Mr. 11 Sheffler is asking about specifically is 12 diaries. 13 MS. WERTHEIMER: Particularly 14 the diaries. But my point only here is 15 the focus has been on the diaries. The 16 question Mr. Bezanson asked is we made a 17 demand for all the documents. 18 MR. SHEFFLER: One through 11. 19 MS. WERTHEIMER: Right. 20 MR. SHEFFLER: I'm going back 21 to the diary. I'm just pursuing the 22 diaries at this point. There may not be 23 any documents responsive to one through 24 10. I don't know. I doubt if there are</p>	<p style="text-align: right;">Page 2694</p> <p>1 Q. We were talking about this 2 period after the deposition and before 3 December 17th. 4 A. Um-hum. 5 Q. Okay. I'm listening. Anybody 6 else? 7 A. Not that I can think of. 8 Q. All those people told you not to 9 produce the documents? 10 A. Not necessarily the -- the 11 diaries were not specific. 12 Q. Who specifically told you, 13 besides Scruggs, not to produce the 14 diaries? 15 MR. ALDOCK: Again, you are 16 talking about all the documents. You are 17 focusing on the diaries. 18 MR. SHEFFLER: Can I ask the 19 question, your Honor? 20 THE COURT: You may go ahead. 21 MR. SHEFFLER: I'm asking about 22 the diaries. That's all I am asking about 23 at this point. I may ask about other 24 things at another point. Can we just</p>
<p style="text-align: right;">Page 2693</p> <p>1 but certainly for 11, the diaries, it was 2 responsive. Why didn't he give them to 3 us? 4 The "why" is the question. It's 5 not really -- 6 THE WITNESS: No specific 7 answer. I don't know whether I can answer 8 you. 9 BY MR. SHEFFLER: 10 Q. You said Scruggs told you you 11 didn't have to? 12 A. I think we were in the process 13 of litigation and things were going to go 14 through the channels and they were going 15 to be produced. 16 Q. Scruggs tell you you didn't have 17 to produce this document? 18 A. I believe that I also got that 19 advice from Mr. Doheny and Mr. Thompson in 20 terms of producing documents that were 21 going to -- they were going to produce the 22 documents as it goes on. I was also 23 talking to the Department of Justice at 24 the time.</p>	<p style="text-align: right;">Page 2695</p> <p>1 proceed with the diaries? 2 THE WITNESS: That's part of 3 the total production. 4 BY MR. SHEFFLER: 5 Q. Sir, my question to you is the 6 diaries. All right? 7 A. I didn't produce them. 8 Q. Besides Scruggs who else told 9 you not to produce the diaries? 10 A. I believe Mr. Doheny and Mr. 11 Thompson may have been involved in that. 12 Q. Okay. When did they tell you 13 that? 14 A. I'm not clear on it. Sometime 15 in December. 16 Q. Okay. Were you acting upon the 17 advice of Mr. Doheny and Mr. Thompson to 18 not produce the diaries? 19 A. They were going to make a 20 production. 21 Q. Were you acting upon the advice 22 of Mr. Doheny and Mr. Thompson to not 23 produce the diaries? 24 A. I was going to produce the</p>

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<p style="text-align: right;">Page 2696</p> <p>1 complete set of documents. The diaries                  2 were part of the documents.                  3 Q Sir, Mr. Doheny and Mr. Thompson                  4 never represented you in the Moore case,                  5 did they?                  6 A I don't think so.                  7 Q We are talking about the                  8 deposition demand made upon you in the                  9 Moore case, and the demand -- the                  10 deposition demands made upon you in the                  11 Moore case for the diaries. Did you --                  12 MR. ALDOCK: You were asking him                  13 directly about Kentucky. Now you switched                  14 back and you are entitled to do that.                  15 You were asking him about the deposition                  16 in Kentucky.                  17 MR. SHEFFLER: I'm clarifying                  18 my question.                  19 MR. ALDOCK: You are changing                  20 it. If -- the witness gets confused when                  21 you do that. I get confused when you do                  22 that.                  23 MR. SHEFFLER: I'm going to                  24 clarify the record for the witness so</p>	<p style="text-align: right;">Page 2698</p> <p>1 subpoena with Moore -- in Moore with                  2 either Doheny or Thompson? Ever?                  3 A I believe that Thompson and                  4 Doheny were in direct communication with                  5 Scruggs in this matter.                  6 Q On this matter, being Moore?                  7 A I believe in terms of document                  8 production.                  9 Q In Moore?                  10 A In terms of document production.                  11 Q Sir, you have got to answer my                  12 question. Please, how can I --                  13 THE COURT: His question was                  14 whether you ever went over the list of the                  15 documents with either Mr. Doheny or Mr.                  16 Thompson.                  17 THE WITNESS: I don't believe                  18 so. In relation to Moore.                  19 Q All right. Now, besides Scruggs                  20 did anybody tell you you didn't have to                  21 produce the diaries in Moore?                  22 A I wasn't asked for the documents                  23 at the time of the deposition. I didn't                  24 have documents with me. I wasn't asked.</p>
<p style="text-align: right;">Page 2697</p> <p>1 there is no confusion.                  2 Q There were demands made upon you                  3 for the diaries in the Moore case, both                  4 through deposition subpoena duces tecums,                  5 and through requests at the deposition                  6 itself?                  7 A Um-hmm.                  8 Q Now, you said that Scruggs told                  9 you you didn't have to produce it. You                  10 said that Doheny told you you didn't have                  11 to produce it. And you told us that                  12 Thompson told you you didn't have to                  13 produce it; is that right?                  14 A We were going to produce it at a                  15 time when all the records could be put                  16 together. I don't think the diaries were                  17 selected out in the production request,                  18 were they? Did he say, I just want the                  19 diary? No. He had a whole list of one                  20 through 11. They were going to be                  21 produced.                  22 Q Sir -- and I'm going to ask this                  23 question very carefully. Did you ever go                  24 over the document request attached to the</p>	<p style="text-align: right;">Page 2699</p> <p>1 MR. SHEFFLER: Do we have to go                  2 off the record under seal again? I mean,                  3 his testimony --                  4 THE COURT: Counsel, can you                  5 all --                  6 MS. WERTHEIMER: Can I just show                  7 him the request?                  8 THE COURT: We have been through                  9 that.                  10 THE WITNESS: I'm getting a                  11 little tired, your Honor, I'm sorry.                  12 MS. WERTHEIMER: I have shown                  13 you this on my page 5. I can show you                  14 what I am showing him.                  15 Q I believe you have got the right                  16 thing.                  17 MS. WERTHEIMER: You testified                  18 you weren't asked for the documents in                  19 Moore. Now, does this refresh your                  20 recollection?                  21 THE WITNESS: Yes, I was asked                  22 by Mr. Bezanson, yes.                  23 BY MR. SHEFFLER:                  24 Q Now, did you discuss the reasons</p>

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<p>Page 2700</p> <p>1 for not producing the diaries with anybody 2 besides Scruggs? 3 A. Not to my recollection, no. 4 Q. Okay. 5 THE COURT: Have we established 6 when you got advice from Mr. Scruggs 7 subsequent to November the 29th? 8 THE WITNESS: I think it was 9 after the deposition. 10 THE COURT: Well, was it after 11 December the 17th? 12 THE WITNESS: I can't recall, 13 your Honor, specifically. 14 BY MR. SHEFFLER: 15 Q. All right. When you gave all of 16 your documents to Scruggs, in December, 17 you said you gave him all your files from 18 Brown &amp; Williamson. Why didn't you give 19 him the diaries? 20 A. Why didn't I? 21 Q. Because your testimony -- as I 22 understand your testimony, sir, you had 23 the diaries up until January, right, of 24 1996?</p>	<p>Page 2702</p> <p>1 Q. When would that discussion, 2 may-have discussion taken place? 3 A. Sometime in December. 4 Q. Okay. Okay. You met with Mr. 5 Motley on three occasions, two days or 6 three days each, to go over certain 7 documents; is that right? In part -- I 8 mean, I know he flew you down because you 9 are good buddies but in part you were 10 going over documents at some point; right? 11 A. Yes. 12 Q. You testified yesterday that 13 those were R.J. Reynolds documents, right? 14 MR. ALDOCK: Actually, he 15 didn't, I did. 16 Q. R.J.R. documents, I think he 17 said. 18 A. One was an R.J.R. document, the 19 other was a Philip Morris document. 20 Q. There were just two documents? 21 A. Two sets of documents. 22 Q. Two sets of documents, okay. 23 Now, did you talk about the two sets of 24 documents at more than one meeting?</p>
<p>Page 2701</p> <p>1 A. Um-hum. 2 Q. And you gave all your documents 3 to Scruggs in 1995, right? 4 A. Um-hum. 5 Q. Why didn't you give him the 6 diaries? 7 A. No specific reason. 8 Q. Did you have a discussion with 9 Scruggs about not giving him the diaries? 10 Mr. Scruggs. 11 A. Not that I can recall. 12 Q. Did you have a discussion with 13 any attorneys in the Moore case about not 14 producing the diaries -- 15 A. No. 16 Q. -- except Scruggs? 17 A. Scruggs wasn't my -- he wears 18 two hats. I can't comment to what he does 19 in the Moore case. 20 Q. Okay. Did you discuss with 21 Margolin, Mr. Margolin, about producing 22 the diaries? 23 A. I may have, I can't recall 24 specifically.</p>	<p>Page 2703</p> <p>1 A. No. 2 Q. So let me ask you this, sir: 3 Did you talk about the R. J. Reynolds 4 documents, R.J.R. documents, with Mr. 5 Motley with respect to the Moore case? 6 A. No. 7 Q. What documents did you review? 8 A. In specific? 9 Q. Yes. 10 A. In respect to what? 11 Q. What documents of R.J.R. did you 12 review? 13 A. I reviewed specifically a report 14 by a scientist called Brubaker. 15 Q. Anything else? 16 A. That's all. 17 Q. So how many R.J.R. documents did 18 you review? 19 A. It was a report that was 20 probably some 80 to 90 pages long. 21 Q. And that's it? 22 A. Um-hum. 23 Q. Did Mr. Motley tell you why he 24 wanted you to review that report?</p>

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B&W PROTECTED BY MINNESOTA TOBACCO LITIGATION PROTECTIVE ORDER

Brown & Williamson vs. Wigand  
VOLUME 15

Multi-Page November 13, 1996, Depo of Jeffrey Wigand

<p>Page 2704</p> <p>1 A. He wanted my comments on it and 2 I provided my comments to him. 3 Q. Did you provide him any written 4 comments? 5 A. Verbally. 6 Q. Okay. Again, can you give us an 7 idea when this took place? 8 A. The R.J.R. documents? About 9 three weeks ago, two weeks ago. 10 Q. Well, when you say R.J.R. 11 documents, was it one document? 12 A. One large document. 13 Q. Okay. And did you discuss with 14 Mr. Motley anything with respect to 15 further document review of R.J.R. 16 documents? 17 A. At that time, no. 18 Q. At any time. 19 A. No. 20 Q. So he asked you to come down and 21 review one document of many pages? 22 A. One large document. 23 Q. Of R.J.R., and that was the only 24 time you reviewed any R.J.R. documents --</p>	<p>Page 2706</p> <p>1 A. In the context of discussing 2 with Wilmer, Cutler and Pickering? 3 Q. No. I'm talking about anyone 4 else other than Wilmer, Cutler and 5 Pickering. 6 A. No. 7 Q. You have never discussed any 8 R.J.R. documents with anyone other than 9 Motley, and that was one long document, 10 and Wilmer, Cutler and Pickering? 11 A. And those are totally different 12 documents at Wilmer, Cutler. 13 Q. No one else have you ever 14 discussed R.J.R. documents after you have 15 been fired? 16 A. Not to my recollection. 17 Q. Okay. Let's talk about the 18 Philip Morris document for a second. You 19 discussed the Philip Morris document 20 with -- or documents. Were there more 21 than one document that you reviewed for 22 Mr. Motley? 23 A. There were a series of documents 24 that were produced in transom documents.</p>
<p>Page 2705</p> <p>1 A. Yes. 2 Q. -- for Mr. Motley? 3 A. On R.J.R., yes. 4 Q. Have you reviewed any R.J.R. 5 documents for anyone else after you have 6 been terminated from B &amp; W? 7 A. Yes. 8 Q. Who? 9 A. In connection with Wilmer, 10 Cutler and Pickering. And that's covered 11 by a court order. 12 MS. WERTHEIMER: Can I just have 13 one moment? 14 MR. SHEFFLER: You sure can. 15 (Mr. Wigand confers with counsel 16 off the record.) 17 Q. Anyone else, sir? 18 A. Anyone else? You will have to 19 repeat the question. 20 Q. Did you discuss R.J.R. R 21 documents with anyone else? 22 A. No. 23 Q. Discuss, not be shown, but 24 discuss R.J.R. documents with anyone else?</p>	<p>Page 2707</p> <p>1 Q. Okay. You had access to those? 2 A. I saw those documents at 3 Mr. Motley's office. 4 Q. Did you have to sign anything to 5 see those documents? 6 A. I'm not sure whether I signed it 7 relative -- 8 Q. This was a few weeks ago? 9 A. No, this was way back. 10 Q. Way back meaning when? 11 A. Early 1996, mid -- early 1996. 12 Q. Early to mid-1996. That's what 13 you testified yesterday, it was early to 14 mid-1996. 15 A. I'm not exactly sure. 16 Q. Way back to early to mid-1996 17 you can't recall signing a confidentiality 18 order or agreement with respect to review 19 of these documents? 20 A. I don't believe I did, no, to 21 those documents. 22 Q. But you don't know that you 23 didn't? 24 A. I can't recall.</p>

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<p>Page 2708</p> <p>1 Q These confidentiality agreements 2 must be pretty significant matters -- 3 strike that.</p> <p>4 Sir, what was the extent of the 5 documents you reviewed or the Philip 6 Morris documents, how many were there?</p> <p>7 A Oh, 10, 15 documents.</p> <p>8 Q Okay. And did you give your 9 comments to Mr. Motley with respect to 10 them?</p> <p>11 A I verbally gave Mr. Motley those 12 comments.</p> <p>13 Q Were there any written 14 communications you had with Motley, Mr. 15 Motley, with respect to them?</p> <p>16 A No.</p> <p>17 Q Did Mr. Motley tell you why he 18 wanted you to review them?</p> <p>19 A Not specifically.</p> <p>20 Q He just said, here, look at 21 these, tell me what you think?</p> <p>22 A He asked me to look at the 23 documents and give him some technical -- 24 using my general technical knowledge and</p>	<p>Page 2710</p> <p>1 A Not that I believe, no.</p> <p>2 Q Okay. So you spent -- that's 3 eight to 10 hours reviewing documents of 4 other companies for Mr. Motley in these 5 seven days that you spent down in 6 Charleston. What did you review or talk 7 about or discuss or consult with in the 8 rest of the seven days?</p> <p>9 A Personal matters.</p> <p>10 Q Personal matters.</p> <p>11 A Um-hum.</p> <p>12 Q With respect to what?</p> <p>13 A Personal matters, matters -- 14 that's between me and my attorney.</p> <p>15 Q Mr. Motley does not represent 16 you in this action, correct?</p> <p>17 A No, Mr. Motley represents me as 18 my personal attorney, though.</p> <p>19 Q In matters regarding tobacco?</p> <p>20 A In matters regarding tobacco and 21 as well as other matters.</p> <p>22 Q Okay. Well, let's just stick 23 with the matters regarding tobacco. Are 24 any of those matters pending matters?</p>
<p>Page 2709</p> <p>1 background to give him my scientific 2 opinion of what the documents meant.</p> <p>3 Q What did the documents deal 4 with?</p> <p>5 A Philip Morris's reconstituted 6 tobacco process.</p> <p>7 Q And so you were able to give him 8 your views about the reconstituted process 9 of Philip Morris based upon your review of 10 those documents and your knowledge about 11 the reconstitution process of tobacco?</p> <p>12 A My general knowledge, yes.</p> <p>13 Q How much money were you paid for 14 these consultations?</p> <p>15 A Nothing.</p> <p>16 Q So you spent how much time 17 looking at these Philip Morris documents?</p> <p>18 A Three, four, maybe five hours.</p> <p>19 Q Okay. So how much time did you 20 spend reviewing the document by R. J. 21 Reynolds?</p> <p>22 A Four or five hours.</p> <p>23 Q Was there any confidentiality 24 agreement with respect to that document?</p>	<p>Page 2711</p> <p>1 A They may be or may not be.</p> <p>2 Q They may be or may not be. To 3 your knowledge are any pending? Do you 4 know what I mean by "pending"?</p> <p>5 A Yes. Why don't you explain it 6 to me?</p> <p>7 Q Well, what I mean is there any 8 ongoing case?</p> <p>9 A If you take a much better action 10 with me you may get a much more responsive 11 answer.</p> <p>12 Q If I take a much better what?</p> <p>13 A Action with me.</p> <p>14 MR. ALDOCK: No, no. No 15 discussions. Go ahead.</p> <p>16 A Your question?</p> <p>17 Q It's the same one I have asked 18 you three times. Are there any ongoing 19 matters?</p> <p>20 A Yes, there are.</p> <p>21 Q What are they?</p> <p>22 A I can't discuss them with you.</p> <p>23 Q What's the names of them?</p> <p>24 A I can't discuss it.</p>

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<p style="text-align: right;">Page 2712</p> <p>1 Q. What's the name of them?</p> <p>2 A. What's the name of what?</p> <p>3 Q. The ongoing matters.</p> <p>4 A. The ongoing legal matters that I</p> <p>5 am considering at this time.</p> <p>6 MR. SHEFFLER: Your Honor, I</p> <p>7 think I am entitled to the names of them.</p> <p>8 MS. WERTHEIMER: I'm sorry.</p> <p>9 Just for -- I don't mean to muddy your</p> <p>10 record. I think the disconnect may be,</p> <p>11 are you asking him is there pending</p> <p>12 litigation with Motley?</p> <p>13 MR. SHEFFLER: That's what I</p> <p>14 have asked three times.</p> <p>15 THE COURT: The pending matters</p> <p>16 could be broader than pending litigation.</p> <p>17 Pending matters could be all kinds of</p> <p>18 things.</p> <p>19 Q. Are there any ongoing cases?</p> <p>20 A. Ongoing cases relative to me?</p> <p>21 Q. Ongoing cases that you are</p> <p>22 consulting with Mr. Motley about.</p> <p>23 A. No, this is strictly -- my</p> <p>24 conversations on that are separate matters</p>	<p style="text-align: right;">Page 2714</p> <p>1 knowledge?</p> <p>2 A. No.</p> <p>3 Q. Okay. Now, have you given us</p> <p>4 all the -- let me ask you this; you</p> <p>5 consulted with Stephen Fine at one point.</p> <p>6 A. Yes.</p> <p>7 Q. When did that consultation begin</p> <p>8 and end?</p> <p>9 A. Sometime in late 1993. I'm</p> <p>10 sorry, '94.</p> <p>11 Q. Okay.</p> <p>12 A. Mid '94.</p> <p>13 Q. Mid '94 to? Is that the</p> <p>14 beginning or the end?</p> <p>15 A. To probably mid-1995.</p> <p>16 Q. Okay. Now, you were given</p> <p>17 documents at that time, right?</p> <p>18 A. No.</p> <p>19 Q. You were given no access to</p> <p>20 documents at all?</p> <p>21 A. No.</p> <p>22 Q. No access to documents at all?</p> <p>23 A. No.</p> <p>24 Q. You didn't see any documents?</p>
<p style="text-align: right;">Page 2713</p> <p>1 than the ongoing case Mr. Motley is</p> <p>2 involved in or this litigation.</p> <p>3 Q. I'm asking you, sir, on the</p> <p>4 matters that you are talking about that</p> <p>5 are personal matters, do those personal</p> <p>6 matters relate to cases?</p> <p>7 A. No. Cases relating to what? Be</p> <p>8 specific.</p> <p>9 Q. To anything.</p> <p>10 A. Anything? I don't know</p> <p>11 anything.</p> <p>12 Q. Potential litigative action.</p> <p>13 MR. ALDOCK: Filed cases. Do</p> <p>14 they relate to filed cases?</p> <p>15 Q. Cases that are now in existence.</p> <p>16 A. No.</p> <p>17 Q. So there are no pending cases in</p> <p>18 which you have consulted with Mr. Motley</p> <p>19 about?</p> <p>20 A. That relate to me, no.</p> <p>21 Q. That relate to anything.</p> <p>22 A. Not to my specific knowledge,</p> <p>23 no.</p> <p>24 Q. How about to your general</p>	<p style="text-align: right;">Page 2715</p> <p>1 A. No.</p> <p>2 Q. You never saw any Philip Morris</p> <p>3 documents?</p> <p>4 A. No.</p> <p>5 Q. You executed an affidavit in</p> <p>6 that case; right?</p> <p>7 A. Um-hum.</p> <p>8 Q. Was it based upon your review of</p> <p>9 any documents that Mr. Fine had produced</p> <p>10 to you?</p> <p>11 A. No.</p> <p>12 Q. It wasn't based upon any other</p> <p>13 review of Philip Morris documents was it?</p> <p>14 A. Yes.</p> <p>15 Q. Did you not agree that</p> <p>16 confidentiality order -- strike that.</p> <p>17 What Philip Morris documents</p> <p>18 have you seen since your termination other</p> <p>19 than the ones you saw with Motley, Mr.</p> <p>20 Motley?</p> <p>21 A. I have seen a lot of Philip</p> <p>22 Morris documents in connection with the</p> <p>23 ABC Philip Morris litigation.</p> <p>24 Q. Were you permitted under the</p>

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<p>Page 2716</p> <p>1 terms of that confidentiality agreement                  2 that you entered into with Wilmer, Cutler                  3 to use the information that you learned                  4 from those confidential documents in any                  5 way without their permission?                  6 A I didn't use any.                  7 Q I'm asking you the question;                  8 were you allowed to?                  9 A No.                  10 Q Have you ever?                  11 A No.                  12 Q You have never done that?                  13 A No.                  14 Q You have honored that agreement?                  15 A Yes.                  16 Q If you were asked by someone to                  17 reveal that confidential information would                  18 you do so voluntarily?                  19 A No.                  20 Q You would honor that agreement?                  21 A Yeah.                  22 Q Because that was a confidential                  23 information; correct?                  24 A I believe so.</p>	<p>Page 2718</p> <p>1 You had access to a lot of                  2 Wilmer, Cutler documents, Philip Morris                  3 documents; is that right?                  4 A Significant amount of documents,                  5 yes.                  6 Q Setting that aside and setting                  7 aside the documents you saw from Mr.                  8 Motley, we also know you have testified                  9 you got Philip Morris documents on an                  10 agreement with CBS to consult with them in                  11 February of 1994?                  12 A Um-hum.                  13 Q Is that correct? Did you send                  14 those documents back to CBS?                  15 A I believe I did.                  16 Q You had a confidentiality                  17 agreement with respect to those documents                  18 with CBS, right?                  19 A Yes.                  20 Q And that agreement prohibited                  21 from you revealing any of the information                  22 or the documents without CBS's permission;                  23 is that correct?                  24 A Those are documents that were in</p>
<p>Page 2717</p> <p>1 Q You would not reveal the content                  2 of the documents nor would you talk about                  3 your conclusions about those documents; is                  4 that correct?                  5 A Yes.                  6 Q Because it was confidential                  7 information, right?                  8 A Um-hum.                  9 Q Would you tell that information                  10 to the FDA if Dr. Kessler came down and                  11 asked for it --                  12 A No.                  13 Q -- would you give it to him?                  14 Because it was confidential information?                  15 A Yes.                  16 Q Okay. And you never have talked                  17 about that information with anyone outside                  18 of Wilmer, Cutler; is that correct?                  19 A That's correct.                  20 Q Now, let me get back to the                  21 Philip Morris documents. You said you got                  22 a lot of Philip Morris documents in                  23 respect to the Wilmer, Cutler -- strike                  24 that.</p>	<p>Page 2719</p> <p>1 the public domain anyway.                  2 Q All of the documents were in the                  3 public domain?                  4 A Yes, they were.                  5 Q How do you know that?                  6 A Why?                  7 Q I said "how." How do you know                  8 that?                  9 A They were readily available from                  10 multiple sources.                  11 Q How do you know that?                  12 A Because I got multiple copies of                  13 them.                  14 Q From whom?                  15 A Over the transom.                  16 Q What's the transom?                  17 A Back of a boat.                  18 Q Back of a boat? Well --                  19 A You have a dictionary, use it.                  20 Q You got those these documents                  21 over the transom relating to Phillip                  22 Morris products?                  23 A I receive lots of documents over                  24 the transom.</p>

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<p style="text-align: right;">Page 2720</p> <p>1 Q. Okay. Now, sir, can you explain 2 to me how it is that you received all 3 these documents over the transom prior to 4 June of 1994. 5 A. I can't explain it. 6 Q. You did testify in the last case 7 that the Philip Morris documents that you 8 sent to Mr. Johnston you received over the 9 transom? 10 A. Um-hum. 11 Q. I took that to mean that you 12 received them anonymously? 13 A. Yeah, that's what -- that's what 14 I think it means. 15 Q. Is that correct? 16 A. Yes. 17 Q. You got documents anonymously 18 from an anonymous source; is that right? 19 A. Yes. 20 Q. Now, have you gotten documents 21 from any other tobacco company from an 22 anonymous source? 23 A. Have I gotten any documents? 24 From time to time there is documents that</p>	<p style="text-align: right;">Page 2722</p> <p>1 A. No. 2 Q. Did you review them? 3 A. I read them. 4 Q. What did you do with the 5 information? 6 A. Threw it away. 7 Q. You threw the information away? 8 A. The information? What I kept in 9 my brain? 10 Q. What did you do with it? Did 11 you ever use it in any way? 12 A. I can't recall. 13 Q. Did you ever talk to anybody 14 about them? 15 A. No. 16 Q. Have you ever shown them to 17 anyone? 18 A. I told you I threw them away. 19 Q. I know you did. Before you 20 threw them away, sir, did you show them to 21 anyone? 22 A. No. 23 Q. Do you have any record of having 24 such documents from Reynolds?</p>
<p style="text-align: right;">Page 2721</p> <p>1 are delivered, yes. 2 Q. Of other companies? 3 A. Um-hum. 4 Q. Whose? 5 A. R.J.R., Philip Morris. 6 Q. Anyone else? 7 A. No. 8 Q. So people have sent you R. J. 9 Reynolds documents anonymously? 10 A. Yes. I have seen some R.J.R. 11 documents that have come to me 12 anonymously, yes. 13 Q. Do you still have copies of 14 those? 15 A. No. 16 Q. Why not? 17 A. I didn't keep them. 18 Q. Why not? 19 A. I threw them away. 20 Q. Why? 21 A. Because I didn't have any need 22 to keep them. 23 Q. Were you asked to review them by 24 anyone?</p>	<p style="text-align: right;">Page 2723</p> <p>1 A. Did I keep a log? No. 2 Q. Is there any record that you 3 could produce that indicates you got these 4 documents? 5 A. No. 6 Q. Did you save the box top with 7 the packaging label that was on them? 8 A. No. 9 Q. Did you save any evidence, i.e., 10 a summary of the documents or some 11 recording that would indicate you ever got 12 these documents? 13 A. No. 14 Q. So there is no way we can prove 15 that you got these documents at all? 16 A. No. 17 Q. Just your word? Is that right? 18 Is that right? 19 A. Yes. 20 Q. Just your word? 21 A. Yes. 22 Q. And when do you claim to receive 23 these documents? 24 A. Through 19 --</p>

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<p style="text-align: right;">Page 2724</p> <p>1 Q. When was the first time you              2 received these documents, these Reynolds              3 documents?              4 A. Oh, Reynolds documents?              5 Q. That's what we have been talking              6 about the whole time, sir.              7 A. From time to time, I can't tell              8 you exactly.              9 Q. When was the first time?              10 A. I can't recall.              11 Q. Was it before June of 1994? Or              12 May, May/June was the time period you were              13 talking to Kessler. I'm going to try to              14 use that as a --              15 A. It could have been, I can't              16 remember.              17 Q. It could have been?              18 A. It could have been, I don't              19 remember.              20 Q. Did you talk to Kessler about              21 the documents?              22 A. I may have, I don't recall.              23 Q. You may have talked to Kessler              24 about R.J.R.?</p>	<p style="text-align: right;">Page 2726</p> <p>1 Q. -- and you kept saying I don't              2 recall. Now, you may have talked to him              3 about R.J.R. documents?              4 A. I may have, I don't remember. I              5 remember specifically the Brown &amp;              6 Williamson documents.              7 Q. You have a tremendous ability to              8 forget conversations and information that              9 you have disclosed in the last two years.              10 But you have no inability to remember              11 conversations you had with Mr. Sandefur              12 six years ago; is that true?              13 A. Oh, I can recall those very              14 specifically.              15 Q. You can't recall specifically              16 what you said to Dr. Kessler just a couple              17 of years ago; is that right?              18 A. I think I related to the best of              19 my knowledge what I discussed with              20 Dr. Kessler.              21 Q. You can't recall whether you              22 discussed Reynolds documents with him or              23 not, can you?              24 A. I can't recall specifically. I</p>
<p style="text-align: right;">Page 2725</p> <p>1 A. I may have. I don't recall              2 specifically but I may have.              3 Q. Dr. Kessler is not an              4 inconsequential person, is he?              5 A. No.              6 Q. He is the head of the FDA,              7 right?              8 A. I had enough other documents to              9 discuss with him.              10 Q. I understand you had a lot of              11 documents to discuss with him and I              12 understand that they were Brown &amp;              13 Williamson documents. That's what you              14 testified up till now.              15 A. That's correct.              16 Q. We went over at great length              17 painfully all of the different things you              18 talked about with Dr. Kessler yesterday,              19 right?              20 A. Yes.              21 Q. You told me that -- when I kept              22 asking you anything else, anything else,              23 anything else --              24 A. I may have.</p>	<p style="text-align: right;">Page 2727</p> <p>1 discussed a lot of things with him.              2 Q. But you can recall specifically              3 what you said to Tommy Sandefur, can't              4 you?              5 A. I can recall very specifically              6 when the president of a company says              7 nicotine is addictive and he wants to get              8 kids hooked --              9 Q. But you can't recall what you              10 said to Dr. Kessler, can you?              11 A. -- I can remember that.              12 Q. He wants to get kids hooked?              13 A. Yes.              14 Q. Are you saying Tommy Sandefur              15 said that?              16 A. Yes. And he also said in his              17 congressional testimony.              18 Q. You said Tommy Sandefur said he              19 wants to get kids hooked in his              20 congressional testimony?              21 A. Yes. He said "hooked".              22 Q. After you -- when you have a              23 break, sir, after this lunch period, we              24 are going to come back and you are going</p>

<p style="text-align: right;">Page 2728</p> <p>1 to show me where Tommy Sandefur ever said 2 he wants to get kids hooked. 3 A. All right. 4 Q. We'll see that. We'll find 5 that. 6 MR. ALDOCK: Wait a minute, 7 wait a minute, we'll take it back. 8 Q. You want to take it back then? 9 A. Yes. In conversation with me he 10 specifically indicated he wanted to get 11 kids hooked on snuff. 12 Q. And you want to take that back 13 or do you want to stand by that? 14 A. In Congress he didn't say that. 15 I'm sorry. 16 Q. You have no proof of that, do 17 you, sir? You made the wild statement he 18 said it in Congress without any proof. 19 When you realized it was a Congressional 20 Record you withdrew it. So then you are 21 making the comment he said it to you other 22 than in Congress; isn't that right? 23 A. He said it to me in early 1989 24 and I will so testify.</p>	<p style="text-align: right;">Page 2730</p> <p>1 can't recall what you talked to Kessler 2 about. I want to ask you specifically, 3 sir, is there some reason why during that 4 1994 period when you were meeting with 5 Kessler you have some blank in your 6 memory? 7 A. I have no blanks in my memory. 8 Q. You remember whether you talked 9 to him about Reynolds documents? 10 A. I'm not sure. 11 Q. You can't recall? 12 A. I definitely talked to him about 13 Brown &amp; Williamson documents. 14 Q. You can't recall whether you 15 talked to him about Reynolds? 16 MR. ALDOCK: Your Honor, in 17 terms of the length of this deposition, 18 this is a dead horse he has been beating 19 for the last 20 minutes and he has gotten 20 the same answers. I don't object to the 21 questions, I'm just pointing out that he 22 is using his time as he chooses. 23 MR. SHEFFLER: Your Honor, I'm 24 going to move on. Although I do think I</p>
<p style="text-align: right;">Page 2729</p> <p>1 Q. The truth of that is as true as 2 he said it in Congress; is that right? 3 A. He used the word "addictive" and 4 "hooked" in Congress in the same breathe. 5 Q. And you, sir, testified here 6 that he said he wanted to get kids hooked 7 and that wasn't true? 8 A. I did not say that. 9 Q. That wasn't true, was it? 10 A. I will qualify it. 11 Q. It wasn't true, was it? 12 A. No, I will take that back. That 13 part I will take back. 14 Q. It wasn't true either that he 15 said it to you at any time? 16 A. I'm sorry, you are wrong, Mr. 17 Sheffler. Wrong. 18 Q. All right. Let's get back to 19 what you said to Kessler or what you can't 20 remember. Let's get back to these R. J. 21 Reynolds documents. 22 You can recall greatly these 23 comments by people back when you were 24 working at Brown &amp; Williamson but you</p>	<p style="text-align: right;">Page 2731</p> <p>1 am entitled to explore his recall since it 2 keeps varying and changing from time to 3 time. 4 THE COURT: You might want to 5 come back to it after lunch. I don't 6 know, that's up to you. I will give you 7 leeway on it. Is this an appropriate 8 time -- an appropriate place to break? 9 MR. SHEFFLER: Just a couple 10 more questions, your Honor, and I will be 11 done. 12 BY MR. SHEFFLER: 13 Q. Did Fine ever offer to give you 14 documents to review? 15 A. No. 16 Q. Finally, sir, the affidavit that 17 you executed for Mr. Fine, was that based 18 upon any document review of Philip Morris 19 documents? 20 A. Yes. 21 Q. And what documents -- since Mr. 22 Fine didn't provide them to you, what 23 documents did you review? 24 A. Hamlet documents that I received</p>

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<p style="text-align: right;">Page 2732</p> <p>1 other than through CBS. 2 Q. You received those prior to the 3 execution of the affidavit; is that right? 4 A. I received those again, yes. 5 Q. And do you recall who sent them 6 to you? 7 A. No, I don't. 8 Q. Those are transom documents too? 9 A. Those are public domain 10 documents. They are all over. 11 Q. Wait, sir. My question is how 12 you received them. They may have been 13 public domain documents. Have you ever 14 received the Congressional Record? 15 A. Yes. 16 Q. Okay. It's a public document; 17 right? 18 A. Yes. 19 Q. But received it, too? 20 A. Yes. 21 Q. The fact that it's a public 22 document doesn't necessarily mean you 23 received it. I'm asking you how did you 24 receive it, who gave it to you, who sent</p>	<p style="text-align: right;">Page 2734</p> <p>1 Q. I didn't ask you that. 2 A. They were in the public domain. 3 Q. I didn't ask you that. Did not 4 Mr. Fine communicate to you that there was 5 a confidentiality order in the case that 6 you were working on with respect to Philip 7 Morris documents? 8 A. That's correct. 9 Q. Did he tell you that? 10 A. Yeah, I learned that. 11 Q. Did he also tell you that that 12 order governed the Hamlet documents? 13 A. I don't believe he did. 14 MR. SHEFFLER: Your Honor, we 15 can take a break now. 16 THE VIDEOGRAPHER: Going off the 17 record, the time is approximately 12:39. 18 (Luncheon Recess Taken.) 19 ----- 20 21 22 23 24</p>
<p style="text-align: right;">Page 2733</p> <p>1 them to you? 2 A. I don't know who sent them to me 3 over the transom. 4 Q. These Philip Morris documents, 5 specifically the Hamlet documents, did you 6 ever discuss them with Mr. Fine? 7 A. Did I ever discuss the Hamlet 8 documents with Mr. Fine? I believe I did, 9 yes. 10 Q. Did you show them to him? 11 A. I may have showed him the copy 12 that came over the transom, yes. 13 Q. Did you tell him that those were 14 Hamlet documents? 15 A. I think they are self-evident 16 that they are Hamlet documents. 17 Q. And you showed them to Mr. Fine? 18 A. I believe I did, yes. 19 Q. Did not Mr. Fine communicate 20 with you the fact that there was a 21 confidentiality order in his case 22 governing those documents? 23 A. Mr. Fine did not provide those 24 documents to me.</p>	<p style="text-align: right;">Page 2735</p> <p>1 CERTIFICATE 2 I, Thomas F. Runfola, a Registered 3 Professional Reporter, do hereby certify 4 that I reported the deposition of Jeffrey 5 S. Wigand, and that the foregoing 6 transcript of such proceedings is a full, 7 true and correct transcript of my 8 stenotypy notes made to the best of my 9 ability. 10 I do further certify that I was 11 called there in the capacity of a Court 12 Reporter, and am not otherwise interested 13 in this proceeding. 14 15 _____ 16 THOMAS F. RUNFOLA, 17 Registered Professional Reporter. 18 19 20 _____ 21 JESSICA S. CURTIN, 22 Registered Professional Reporter 23 Notary Public for the State of Kentucky. 24 My Commission Expires: _____</p>

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